CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 541

FRANCIS JOSEPH GRYGER, PETITIONER,

vs.

C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY, PHILADELPHIA, PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED JULY 30, 1947.

CERTIORARI GRANTED JANUARY 19, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 541

FRANCIS JOSEPH GRYGER, PETITIONER,

vs.

C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY, PHILADELPHIA, PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

INDEX

	Original	Print
Proceedings in Supreme Court of Pennsylvania	1	1
Petition for writ of habeas corpus, filed February 23,1945	2	1
Docket entry showing petition denied without prejudice	6	3
Petition for writ of habeas corpus, filed September 13, 1945	7	4
Opinion, per curiam, denying petition	24	13
Letter from petitioner to Prothonotary requesting reconsideration	26	14
Petition for reconsideration	28	16
Docket entries	40	21
Petition for writ of certiorari (habeas corpus), filed March 26, 1947	41	22
Docket entry showing petition dismissed	44	23
Petition for writ of habeas corpus, filed May 15, 1947	45	24
Certificate of rule	59	38
Answer of C. J. Burke, Warden	63	39
Exhibit—Certificate of sentence	64	40
Answer of District Attorney	66	40
Exhibit—Information	69	42
Docket entries showing rule discharged and petition refused	73	45
Prothonotary's certificate	77	45

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 12, 1948.

—5269

	Original	Print
Duplicate certificate (omitted in printing)	78	
Record from Court of Quarter Sessions	79	46
Petition for parole and order	80	47
Bill of indictment (No. 671)	84	48
Bill of indictment (No. 672)	86	49
Bill of indictment (No. 1107)	88	50
Bill of indictment (No. 1679)	91	52
Bill of indictment (No. 1680)	95	53
Appearance for defendant (No. 1046)	97	54
Bill of indictment (No. 1046)	98	54
Bill of indictment (No. 1047)	102	56
Information (No. 461) and sentence	104	58
Appearance for defendant (No. 461-2)	108	61
Affidavit of service of information	110	61
Notice of information	110	61
Bill of indictment (No. 461)	113	63
Bill of indictment (No. 462)	115	64
Bill of indictment (No. 251)	117	66
Bill of indictment (No. 252)	119	67
Bill of indictment (No. 253)	122	69
Bill of indictment (No. 254)	124	70
Bill of indictment (No. 255)	126	72
Bill of indictment (No. 256)	128	74
Bill of indictment (No. 257)	129a	75
Bill of indictment (No. 258)	129b	77
Bill of indictment (No. 259)	130	78
Bill of indictment (No. 260)	132	80
Bill of indictment (No. 261)	134	81
Bill of indictment (No. 262)	136	83
Stenographer's transcript	138	85
Testimony of Thomas S. Collins	147	90
Commonwealth's Exhibits Nos. 1 to 8 incl., bill of indictments	159	97
Exhibit—Prisoner's criminal record	193	110
Order granting certiorari	194	112

{fols. 1-2} **IN SUPREME COURT OF PENNSYLVANIA**

PETITION FOR WRIT OF HABEAS CORPUS—Filed February 23, 1945

The Prothonotary, Supreme Court of Pennsylvania, City Hall, Philadelphia, Pa.

GENTLEMEN, DEAR SIRS:

I am an Inmate of the Eastern State Penitentiary. My name is Francis Grygier. Number D-8017.

On July 26th, 1943, I arrived at this Institution on a charge of "Receiving Stolen Goods." I was sentenced by the Honorable Harry S. McDevitt to a term of not less than five years nor more than ten years to start after the expiration of my unexpired parole sentence which was imposed on April 28th, 1937.

After being confined in this Institution for Six 6 months. I regret to say, that I, Francis Grygier, with another inmate D 7320, was taken to the Morristown Court on a charge of "Attempted Prison Breach." Both I and the inmate D 7320 was sentenced to another term of not less than one year nor more than two years to start after the unexpired sentence's imposed on April 28th, 1937, and on July 26th, 1943.

Gentelmen: I wish to make it clear that what I'm about to say, took place, One week after the Prison Breach sentence was imposed on me. Yes, just One week after I was sentenced by the Morristown Court. Honorable Harry S. McDevitt of the Court of Quarter Sessions of the Philadelphia County brought me before him on another charge of Burglary. Agg. A. & B. before passing sentence on me. These are the Honorable Harry S. McDevitt words personally. You tried to get away from the Penitentiary a couple of weeks ago, didn't you? You didn't get far, did you? I sentence you to five to ten years, and I am going to have you indicted for a fourth offender, and give you life.

[fol. 3] Gentelmen: Those were the identical words in which the Honorable Harry S. McDevitt said to me in Court. But it must be understood that the Honorable Harry S. McDevitt did not imposed a life sentence on me.

Instead of that: He imposed a five to ten year sentence to start after the expiration of my sentence's now serving.

After returning to the Institution with this new five to ten year sentence. A few months later I was served with a Copy of an "General Jail Delivery." Now, all this has been done after I was already serving Four, 4 different sentence's.

One of the sentence's being a "Parole Violator."

The other a five to ten year sentence for "Receiving Stolen Goods."

The other a One to Two year sentence for "Attempted Prison Breach."

The other a five to ten year sentence for Burglary. Agg. A. & B.

It was not until after I was already in this Institution for Sixteen 16 months, that I was taken to court on this "Penal Code of 1939, June 24th, P. L. 872" and given an life sentence for being a fourth offender.

This, I do not base my plea on. But, what I am trying to point out is, That I Did Not Have a Fair Trial.

First: I did not have an Counsel, or was I asked rather or not I wanted a counsel.

Second: I did not make any Plea, what so ever.

Third: There were No Witnesses to prove that I am a Fourth Offender. The Court had No Right to except my proof of identity.

Fourth: I believe that any person on trial for his life, should, Should have a Jury Trial to prove rather or not he is guilty as charged.

Sir: I can frankly say that none of the above mention has been done at my trial. I don't cla-me to know very much about your laws. But I do firmly believe in Our Con-
[fols. 4-5] stitution. The above things that I have mention to you are in the 5th, and 6th, Article of the Bill of Rights. They read as following:

Article #5. No person shall be held to answer for a Capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be put in jeopardy of life or limb; Nor Shall Be Compelled in Any Criminal Case to Be a Witness Against Himself, nor be deprived of

life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation.

Article #6. In all criminal prosecutions, the accused shall enjoy the rights to a speedy and public trial, by an Impartial Jury of the State and District Wherein the Crime Shall Have Been Committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; To Be Confronted With the Witnesses Against Him; to have compulsory process for obtaining witnesses in his favor, And to Have the Assistance of Counsel for His Defense.

Gentlemen: What I have UNDERLINED, is what has, "Not Been Done," at my trial. I am enclosing the minutes of my trial. Hoping that you will consider this matter, and hoping that my life sentence can and will be nullified.

Thanking you for any consideration that you may give me. And apologizing for troubling you. I am

Yours faithfully, Francis Jos. Grygier.

[File endorsement omitted.]

[fol. 6] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

266. Miscellaneous Docket No. 8

COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GRYGIER, et al.

DOCKET ENTRIES

February 23, 1945, Petition of Francis Joseph Grygier for Writ of Habeas Corpus filed.

Francis Joseph Grygier.

And now, Mar. 19, 1945 the within petition is denied without prejudice.

Per Curiam.

[fol. 7] IN THE SUPREME COURT OF PENNSYLVANIA, PHILADELPHIA, PENNSYLVANIA

FRANCIS GRYGIER, Relator,

vs.

HERBERT SMITH, Warden, Eastern State Penitentiary, et al., In Supra, Defendants

PETITION

For the Writ of Habeas Corpus (ad Inquirendum) to Inquire Into the Legality of a Life Sentence Imposed by the Honorable Joseph L. Kun, in the Court of Quarter Sessions, November 27, 1944, in the County of Philadelphia, Pennsylvania. The Aforesaid Sentence Was Imposed Without Your Petitioner Being Represented by Counsel, Without Jury Trial, or a Verdict Being Rendered.

Submitter by Francis Grygier, Petitioner.

[fols. 8-9] *Duly sworn to by Francis Grygier. Jurat omitted in printing.*

[fol. 10] To the Honorable Justices of the Supreme Court of Pennsylvania

FRANCIS GRYGIER, Relator,

vs.

HERBERT SMITH, Warden, Eastern State Penitentiary, et al., In Supra, Defendants.

PETITION

For the Writ of Habeas Corpus (ad. Inquirendum) to the Honorable Justices of the Supreme Court: Comes now your petitioner, Francis Grygier, citizen of these United States and a resident of the City and County of Philadelphia, and State of Pennsylvania, who now relates to the Honorable Court:

Record of Facts

That, on the 26th day of July 1943, your petitioner appeared as a defendant in the Court of Quarter Sessions, July Sessions, 1943, Philadelphia County, the Honorable Harry

S. McDevitt, Justice of said Court in and for the said County, presiding, in answer to the charge as contained in indictment No[illegible] and 252, charging me with the crime or crimes of "Burglary, Receiving Stolen Goods, for which crime or crimes after pleading Guilty to Receiving Stolen Goods, your petitioner was sentenced to a term of imprisonment, by the above named justice of the aforementioned Court of "Not less than five (5) years nor more than ten [fol. 11] (10) years in the Eastern State Penitentiary, Philadelphia, Pennsylvania," to which place of imprisonment your petitioner was committed in accordance with the due process of law

"B"

That, on the 4th day of February 1944, your petitioner was arraigned before the Common Pleas Court of Montgomery, Norristown, Pennsylvania in answer to the charge of "Attempted Prison Breach." After pleading guilty to the aforesaid charge, your petitioner was sentenced by the Honorable George R. Corson of the aforementioned Court to a term of Not less than one (1) year nor more than two (2) years in the Eastern State Penitentiary, to begin at the expiration of sentence imposed on April 28th 1937 and July 25th, 1943"

"C"

That, on the 25th day of February 1944, your petitioner appeared as a defendant in the Court of Quarter Session, February Sessions, 1944, Philadelphia County, Philadelphia, Pennsylvania. The Honorable Harry S. McDevitt, Justice of the said Court in and for the said County, presiding, in answer to the charge as contained in indictments No. 461, and 462 of June Sessions 1943, Charging p[illegible]ioner with the crime of "Burglary, and Aggravated Assault and Battery." For which crime and charges, after being convicted of "Burglary," your petitioner was arraigned before the Court by the above named Justice of the aforementioned [fol. 12] Court for sentence. His Honor made the following statement, viz: "You tried to get over the front wall of the penitentiary a couple of weeks ago, didn't you? Didn't get far, did you? At the expiration of what yo[illegible]are doing, do five to ten more. And I am going to have you indicted for a fourth offender, and give you life."

"D"

That, on the 1st day of May 1944, your petitioner received the following notification

IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE FOR THE COUNTY OF PHILADELPHIA

COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GRYGIER, Alias FRANK JACKSON, Alias JOSEPH McGEE, Alias Francis Geyger, Alias Francis Grygeia, Alias Francis Guger

Information Relative to Indictment as of June Sessions, 1943, No. 461

Philadelphia, May 1st, 1944.

To: Edward Grygier, Alias: Frank Jackson, Alias: Joseph McGee, Alias: Francis Geyger, Alias: Francis Grygeia, Alias: Francis Guger, above named defendant.

SIR:

You are hereby notified that on May 1st, 1944, the District Attorney of Philadelphia County duly filed in the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace of said County, on information required by law to be filed by him under the provisions of an Act of Assembly of the Commonwealth of Pennsylvania, Entitled

"The Penal Code of 1939, June 24th, P. L. 872" accusing you of having been previously convicted of certain other Crimes and Offenses as charged in said information, and [fol. 13] included in said Act of Assembly, authorizing the senten-ing of persons convicted of a second or subsequent offense of certain crimes to additional prison terms and to imprisonment for life; and in pursuance of the provisions of said Act of Assembly, a true and correct copy of said Information is handed to you and served upon you.

Signed by: John H. Maurer, District Attorney, Philadelphia County.

IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE FOR THE COUNTY OF PHILADELPHIA

COUNTY OF PHILADELPHIA, S. S. THE COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GRYGIER, Alias: Frank Jackson, Alias: Joseph McGee, Alias: Francis Geyger, Alias: Francis Grygeia, Alias: Francis Guger

Information Relative to Indictment as of June Sessions, 1943, No. 461

1. Be it remembered by this information that I, John H. Maurer, District Attorney of the County of Philadelphia, State of Pennsylvania, in pursuance of an Act of Assembly of the said Commonwealth, entitled, "The Penal Code of 1939, June 24th, P. L. 872", which by section 1108 provides for punishment for second and subsequent convictions, do accuse Edward Grygier, alias Frank Jackson, alias Joseph McGee, alias Francis Geyger, alias [fol. 14] Francis Grygeia, alias Francis Guger, above named, who under and by the name of Francis Guger, within two years last past, to wit, on February 25, 1944, before the Honorable Harry S. McDevitt, a Judge of the Court of Oyer and Terminer and General Jail Delivery of the County of Philadelphia, was duly convicted of the crime of Burglary perpetrated upon the dwelling of one Raymond Wilde on or about June 20, 1943, charged against him in a certain indictment theretofore duly presented and found true at a Grand Inquest of the said Commonwealth, inquiring for said County of Philadelphia as of June sessions, 1943, No. 461, as in said indictment particularly set forth, upon which verdict and judgment was duly entered on the 25th day of February, A. D. 1944, that the said defendant undergo an imprisonment in the Eastern State Penitentiary for a term of not less than five nor more than ten years after the expiration of a sentence he was then serving, pursuant to which judgment he is now there incarcerated of having been previously convicted and

sentenced of certain other crimes three or more times, to wit, the crimes of robbery and burglary, that is to say:

2. That the said defendant under the name of Edward Grygier on March 17th, 1927, was convicted in the Circuit Court of Harford County, Maryland, of Burglary, and sentenced to serve one year at the Maryland House of Correction, and the defendant did undergo an imprisonment in the said Maryland House of Correction from March 17th, 1927 until January 17th, 1928, his discharge therefrom being absolute.

[fol. 15] 3. That the said defendant at Philadelphia County, under the name of Edward Grygier, charged with burglary of the dwelling of Walter Allen in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of April Sessions, 1929, No. 1107, on which he was convicted of said crime as therein set forth on April 23, 1929, upon which verdict, judgement was duly entered the same day by the Honorable Horace Stern, a judge of said Court, that the defendant undergo imprisonment in Huntingdon Reformatory, in pursuance to which the defendant was confined until September 20, 1930.

4. That the said defendant at Philadelphia County, under the name of Frank Jackson, alias Grygier, and in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of November Sessions 1930, No. 1679, was charged with robbery, being armed with an offensive weapon with intent to rob one Paul Grotzinger, and was duly convicted (plead guilty) of said crime as therein set forth on November 28, 1930, upon which verdict (plea) judgement was duly entered the same day by the Honorable Otto R. Heiligman, a judge of said Court, that the defendant undergo an imprisonment in the Eastern State Penitentiary of not less than five nor more than ten years in pursuance of which the defendant was there confined until May 28th, 1936 when he was discharged on parole.

5. That the said defendant at Philadelphia County under the name of Edward Grygier, alias Frank Jackson, alias [fol. 16] Joseph McGee, in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of April Sessions, 1937, No. 1046, charging said defendant with burglary, entering in the night without breaking with

intent to commit a felony, and receiving stolen goods of one Edward O'Neill, on April 28th, 1937, was duly convicted (plead guilty) of receiving stolen goods, and upon which verdict (plea) judgment was duly entered on the same day by the Honorable Raymond MacNeille, a judge of said Court, that the defendant undergo an imprisonment of not less than eighteen months nor more than three years in the Eastern State Penitentiary at the expiration of the unexpired parole sentence impose- on November 28, 1930 on Bill No. 1679 of November Sessions, 1930, and that he was confined there until April 29, 1943, when he was paroled.

Dated: Philadelphia, Pennsylvania, the first day of May, A. D. 1944.

John H. Maurer, District Attorney of Philadelphia, County.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

John H. Maurer, being duly sworn according to law, deposes and says that he is the District Attorney of Philadelphia County and that the facts set forth in the foregoing Information are true and correct to the best of his knowledge, information and belief.

John H. Maurer.

Sworn and subscribed to before me this 1st day of May, A. D. 1944. Ewd. H. White, Jr., Notary Public.

[fol. 17] "E"

That,

On the 27th day of November 1944, your petitioner appeared as a defendant in the Court of Quarter Sessions, November Sessions 1944- Philadelphia County, Philadelphia, Pennsylvania, the Honorable Joseph L. Kun, justice of the said Court in and for the said County, presiding, in answer to the charge as contained in indictment No. 461 of June Sessions, 1943. And, in pursuance of an Act of Assembly of the said Commonwealth, entitled, "The Penal Code of 1939, June 24th, P. L. 872". On which indictment, and despite the fact that your petitioner was denied his Constitutional rights, To Wit:

(1) Your petitioner was not represented by Counsel.

(2) The Court did not ask petitioner if he wished to be presented by counsel.

(3) There were No Witnesses in Court to Prove that I was a Fourth Offender.

(4) The Court did not ask your petitioner if he Pleaded Guilty, or Not Guilty.

(5) The Court did not ask petitioner if he wanted a Jury Trial.

(6) There was no Verdict Rendered.

Notwithstanding the above allegations, the above named Justice of the aforementioned Court decreed as follows: "I don't see any point in further discussion because the case seems very clear and it becomes my duty and I now pronounce sentence: "That you undergo life imprisonment in the Eastern State Penitentiary, and the sentence of [fol. 18] February 25th, 1944 is vacated in accordance with the Act of Assembly when sentence is life imprisonment."

AVERMENTS AND ALLEGATIONS

That your petitioner avers that the tried Court procedure, and the sentence imposed November 27, 1944, was unconstitutional, due to the fact that petitioner was tried for the said charge on the 25th day of February 1944, before the Honorable Harry S. McDevitt, justice of said Court in and for the said County, and after conviction, your petitioner was sentenced by the above named Justice of the aforementioned Court to a term of five (5) to ten (10) years in the Eastern State Penitentiary. Therefore your petitioner contends that he has been twice tried for the same offense. Furthermore this is in direct contravention of Article 5, of the United States Constitution, which states: "Nor Shall any Person be Subject for the Same Offense to be Twice put in Jeopardy of Life or Limb."

Your petitioner further avers and contends:

That,

By the Sixth Amendment of the Federal Constitution, "a person charged with crime is guaranteed the right to have the assistance of Counsel for his defense."

> In all criminal prosecutions, the accused shall enjoy the right to have . . . the assistance of Counsel for his defense."

For confirmation see:

[fol. 19] Mooney v. Johnson, 85 L. Ed. 517
Mooney v. Holohan
Walker v. Johnson

Wherefore your petitioner now alleges and contends:

That, in accordance with the Statutes of the Commonwealth of Pennsylvania, the Court erred in recommitting your petitioner to the Eastern State Penitentiary, under "The Penal Code of 1939, June 24th, P. L. 872." *In Com. v. Dudick*, 88 Pa. Super. 87. Defendant was sentenced 8 3 1925 to two (2) years., at Allegheny County Workhouse. 1 2 1926 now sentence was imposed. Held: Sentence of 8 3 1925 still in force. A sentence cannot be changed after term.

The Court cannot increase a sentence even during the term after the accused has already entered upon the service of his sentence.

Butler v. Hill, 11 Northum, 370.
1588 C. J. S.
1589 C. J. S.
Com. v. P. R. R., 41 Pa. Super. 29.

When accused has been convicted, sentenced, and delivered to the Warden or Superintendent of a Prison or Reformatory under a mittimus, execution of the sentence is said to have began and the trial Court is without jurisdiction over the case.

[fol. 20] Hynes v. U. S. C. C. A. Ill., 35 Fed. (2d) 734.
People ex rel. Swanson v. Williams, 185 N. E. 198, 325 Ill. 227.

When accused has entered on the execution of a sentence and the Court erroneously renders a second judgment which in terms sets aside the first, the former remains in full force and effect, even though the second judgment is void

Price v. McGuiness, C. C. A. N. J., 269 Fed. 977.

Your petitioner verily shows to the Honorable Justices of the Supreme Court of Pennsylvania:

That, he had filed a petition before the Supreme Court of Pennsylvania, in regards to the foregoing technicalities,

and hereto presents a duplic*ta*- of the letter petitioner received in answer to same. Viz and to wit:

Francis Grygier, No. D-8017, Eastern State Penitentiary, Philadelphia, Pennsylvania.

In re: Com. ex rel. Grygier vs. Smith, No. 266 Misc. Docket No. 8

Dear Sir:

The following order has been made on the petition for writ of habeas corpus filed in the above entitled matter:

"And now, Mar. 19, 1945, the within petition is denied without prejudice.

Per Curiam."

Yours very truly, Edna Mixsell, Deputy Prothonotary.

[fols. 21-23] Wherefore your petitioner now contends:

That, by virtue of all the above and foregoing allegations as herein related, he is being held in illegal restraint and detention by the authorities of the Eastern State Penitentiary, Philadelphia, Pennsylvania, and that he is being deprived of his lawful liberty in direct contravention of the United States Constitution. And: Now your petitioner prays:

That a writ of habeas corpus shall be made to issue upon herein named defendants, et al., so that the injustices herein legally complained of may be adjudicated in accordance with the Statutes of the United States Constitution, which so provides.

To All of the Above Your Petitioner Shall Forever Pray:

Francis Grygier, Petitioner-in-Person.

Sworn and subscribed to before me this 3rd day of September, Our Lord, 1945. Walter Tees, Notary Public. My Commission expires Jan. 2, 1949. (Seal.)

[fols. 24-25] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

No. 301. Miscellaneous Docket No. 8. Petition for Writ of Habeas Corpus

COMMONWEALTH ex rel. FRANCIS GRYGIER

v.

HERBERT SMITH, Warden

OPINION OF THE COURT

Per CURIAM:

Even assuming for present purposes the verity of the petitioner's averments as well as the merit of his legal contention that the sentence imposed on him by the Court of Quarter Sessions of Philadelphia County on November 27, 1944, as a fourth offender, was in error, his petition for a writ of habeas corpus to relieve him from that sentence is premature. He is at present confined in the Eastern Penitentiary under prior sentences which are not attacked and which will not expire at the earliest until Febr y 25, 1949. He is therefore now validly restrained of his liberty. Consequently his petition for habeas corpus must be denied. See *Commonwealth ex rel. Toliver v. Ashe, Warden*, 336 Pa. 206, 208, 8 A. 2d 541, cert. den., 311 U. S. 646; *Commonwealth ex rel. Lewis v. Ashe, Warden*, 335 Pa. 575, 576, 7 A. 2d 296, cert. den., 308 U. S. 596; also *Commonwealth ex rel. Sloan v. Ashe, Warden*, 133 Pa. Superior Ct. 32, 38, 1 A. 2d 788.

[File endorsement omitted.]

[fol. 26] IN SUPREME COURT OF PENNSYLVANIA

LETTER FROM PETITIONER

October 18th, 1945.

Supreme Court of Pennsylvania, Eastern District, Philadelphia, Pennsylvania.

To The Prothonotary:

DEAR SIR:

In reply to the petition of Francis Grygier v. Herbert Smith, Warden. No. 301. Miscellaneous Docket No. 8.

The Honorable Justices of the Supreme Court stated:

That I, Petitioner, "Is at present confined in the Eastern State Penitentiary under prior sentences which are not attacked and which will not expire at the earliest until February 25, 1949. He is therefore now validly restrained of his liberty. Consequently his petition for hab-as corpus must be denied."

I wish to inform the Honorable Court. "That I am *Not at present confined under prior sentences.* "All previous sentences were *"Vacated"* in Accordance With the Provisions of the Act of Assembly *When Sentence is Life Imprisonment.*

I am, And have been, Serving a Life Sentence since *November 27, 1944.*

The Honorable Justices Joseph L. Kun. "During the trial." Stated that the Life Sentence was to start *"Immediately" November 27, 1944.* And as for the previous sentences: He also stated that they were *Vacated* in Accor-ance With the Provisions of the Act of Assembly *When Sentence is Life Imprisonment.* You will see the *Statement of Honorable Joseph L. Kun,* in the *Testimony* in which I am forwarding to the Court, See *Bottom of page 21 in testimony:*—Honor. The Court:

Also see "Information" Relative to Indictment as of June Sessions, 1943, No. 461. On *Back of Page* of *Information,* you will see the sentence of your petitioner, Also the sentence 2-25-44 is *Vacated.*

[fol. 27] So therefore what I have just stated: I believe that the Honorable Court should *"Re-Open" my case for re-consideration.*

I've tried my very best to receive a *Certified copy* of my *Committment* along with a *Certified copy* of my *Indictment* of the *Original Life Sentence in which I am now serving.* After sending for them by mail: I received a *Wrong Set* of papers in which I did *Not ask for.* Finally I have gotten in-touch with the Prothonotary George C. Richards of the Court of Quarter Sessions, Philadelphia, Pennsylvania. He tried to have me believe that the papers in which he mailed to me were my Original Committment and Indictment of my Life Sentence. When I told him that they were Not the papers in which for, that I wanted the *Original Certified* Copy of Committment and Indictment *in which like the one's the Court had issue to the Institution upon my arrival.* When I explained this matter to him *clearly.* He stated that there was No Way What-so-ever he could give me a Copy of my Committment and Indictment as I've asked for. Not knowing his reason for this, I left the matter as it was. Immediately I went and saw the Deputy Warden of this Institution and explained the matter to him. I've asked the Deputy Warden if he would kindly let me have a Photostat Copy of the *Original* Certified Committment of my Life Sentence in which I am now serving at present. In close I am forwarding the *Photostat Copy* of the *Institution's Original Certified Life Sentence* to the Honorable Justices of the Supreme Court, to shows that I am, And have been, Serving a Life Sentence *since November 27, 1944.*

Now that I have made myself clear. I only hope and pray to God, that the Honorable Justices of the Supreme Court, Will Re-Open my case for re-consideration, so that my Life Sentence can be Nullified.

In close you will find Check for $1.00. One dollar to cover the cost of the filing fee.

Thanking you, And apologizing for troubling you

Yours faithfully, Francis Grygier.

[fol. 28] IN THE SUPREME COURT OF PENNSYLVANIA, PHILADELPHIA, PENNSYLVANIA

FRANCIS GRYGIER, Relator,

vs.

HERBERT SMITH, Warden, Eastern State Penitentiary, et al., In Supra, Defendants

PETITION FOR RECONSIDERATION—Filed October 26, 1945

Humbly do I implore the Court to "*Reconsider*" my Writ of Habeas Corpus. Due to the fact that petitioner has failed in presenting a Certified Copy of his Commitment and Indictment to the Honorable Court.

And Now,

To inquire into the Legality of a Life Sentence that was imposed by the Honorable Joseph L. Kun, In the Court of Quarter Sessions, November 27, 1944, In the County of Philadelphia, Pennsylvania.

The aforesaid Life Sentence was imposed on November 27, 1944 *To Start, "Immediately", November 27, 1944.*

As for my previous sentences, from of, February 25, 1944. They were, "*Vacated*" in Accor-ance With the Provisions of the Act of Assembly *When Sentence is Life Imprisonment.*

2. Your petitioner was Not Represented by *Counsel*, nor did the Court ask your petitioner if he wished to be represented.

3. There were No Witnesses in Court, No Jury Trial, nor a Verdict Being Rendered.

Submitter, Francis Grygier, Petitioner.

[fols. 29-30] *Duly sworn to by Francis Grygier. Jurat omitted in printing.*

[fol. 31] To the Honorable Justices of the Supreme Court of Pennsylvania

Francis Grygier, Relator,

vs.

Herbert Smith, Warden, Eastern State Penitentiary, et al., In Supra, Defendants

Petition

"To *Reconsider,*" Writ of Habeas Corpus (Ad. Inquirendum)

To the Honorable Justices of the Supreme Court:

Comes Now Your Petitioner, Francis Grygier, citizen of these United States and a resident of the City and County of Philadelphia, and State of Pennsylvania, who now relates to the Honorable Court:

Record of Facts

On the 27th day of November 1944, your petitioner appeared as a defendant in the Court of Quarter Sessions, November Sessions—1944, Philadelphia County, The Honorable Joseph L. Kun, Justice of said Court in and for the said County, presiding, in answer to the charge as contained in indictment No. 461, of June Sessions, 1943. And in pursuance of an Act Assembly of the said Commonwealth, entitled, "The Penal Code of 1939, June. 24th, P. L. 872." On which indictment, and despite the fact that your petitioner was denied his Constitutional Rights, To Wit:

(1) Your petitioner was *Not Represented by Counsel,*

(2) The Court did Not ask petitioner if he wished to be represented by Counsel.

[fol. 32] (3) There were No Witnesses in Court to Prove that petitioner was a Fourth Offender.

(4) The Court did Not ask petitioner if he Pleaded guilty, or Not guilty.

(5) The Court did Not ask petitioner if he wanted a Jury Trial.

(6) There Was No Verdict Rendered.

Notwithstanding the above allegations, the above named Judge of the aforementioned Court decreed as follows: "I don't see any point in further discussion because the case seems very clear and it becomes my duty and I now pronounce sentence: "That You Undergo Life Imprisonment In The Eastern State Penitentiary, And the Sentence from the February 25th, 1944 *is Vacated* in Accordance with the Provisions of the Act of Assembly *when Sentence is Life Imprisonment.*"

Averments and Allegations

Your petitioner avers that the trial Court procedure, and the sentence imposed November 27, 1944, was unconstitutional, due to the fact that petitioner was tried for the said charge on the 25th day of February 1944, before the Honorable Harry S. McDevitt, justice of the said Court in and for the said County, And after conviction, your petitioner was sentenced to a term of five (5) to ten (10) years in the Eastern State Penitentiary. Therefore your petitioner contends that he has been Twice tried for the same offense. Furthermore this is in direct contravention of Article 5, of the United States Constitution, which states: "Nor Shall any Person be Twice Put in Jeopardy of Life or Limb."

Your petitioner further avers and contends:

[fol. 33] By the Sixth Amendment of the Federal Constitution, "a person charge- with crime is Guaranteed the right to have the Assistance of *Counsel for his defense.*"

In all Criminal prosecutions, the Accused shall enjoy the right to have . . . the Assistance of Counsel for his defense.

Your petitioner further avers and contends: That, on March 13, 1940. The Superior Court of Pennsylvania has granted an Writ of Habeas Corpus and an *Outright discharge to Otto Sheltz*, a former inmate of the Eastern State Penitentiary. The discharge was granted to Otto Sheltz due to the fact that Otto Sheltz was *Not Represented by Counsel.*

("From One of Our City Newspapers")

Judge Askes State Public Defender March 13, 1940.

Judge G. Gorden, calls for action at Special Sessions in granting the Re-Trials.

In a sweeping opinion handed down by Judge James G. Gorden, Jr.; today the jurist points out that recently Appellate Decisions have created such a departure in the Application of Constitutional Rights, that a state defender is necessary in Penna.

Judge G. Gorden, chairman of the committee on criminal business of the board of Judges of Common Pleas Courts; said that the new legal situation creates such a serious problem that Governor James should include in his call for a Special Session legislation creating and financing the State Public Defender. The Judges recommendation followed the reluctant granting of a new trial to Three men convicted of larceny and receiving stolen goods in connection with the hold-up of a truck in the northeast.

One of the defendants was represented by Lemuel R. [fol. 34] Schofield, but the two co-defendants were not represented and did not ask for Counsel. Judge Gorden found that the men were properly convicted, but of his own motion granted a New trial to All Three under a week old ruling of the Superior Court, Which held it is the *Duty* and the Obligation of a Criminal Court *to Appoint Counsel for every defendant.* The Superior Court granted a Writ of Habeas Corpus, and an Outright discharge to Otto Sheltz, who had served Nine years of a 23 to 46 year term, after being convicted Without benefit of Counsel. The Court decision pointed out it had been the practice in the past to permit the trial of defendants without Lawyers, if they Specifically Requested Counsel, but under the New Decision it becomes the *Courts Duty to See That Lawyers Are Appointed for the Defense,*—"*and That Failure to do so Constitutes a Violation of Constitutional Rights.*" Judge G. Gorden pointed out every defendant Must be Supplied with Counsel, unless he *Definitely States* that he does *Not* wish to be *Represented.*

Your petitioner verily shows to the Honorable Justices of the Supreme Court of Pennsylvania: That, he had filed a petition before the Supreme Court of Pennsylvania in regards to the foregoing technicalities, and hereto presents a duplicate of the letter petitioner received in answer to same. Viz and to Wit:

IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

No. 301. Miscellaneous Docket No. 8

Petition for Writ of Habeas Corpus

COMMONWEALTH ex rel. FRANCIS GRYGIER

v.

HERBERT SMITH, Warden

[fol. 35] OPINION OF THE COURT

Even assuming for present purposes the verity of the petitioner's averments as well as the merit of his legal contention that the sentence imposed on him by the Court of Quarter Sessions of Philadelphia County on November 27, 1944, as a fourth offender, was in error, his petition for a writ of habeas corpus to relieve him from that sentence is premature. He is at present confined in the Eastern Penitentiary under prior sentences which are not attacked and which will not expire at the earliest until February 25, 1949. He is therefore now validly restrained of his liberty. Consequently his petition for habeas corpus must be denied. See *Commonwealth ex rel. Toliver v. Ashe, Warden*, 336 Pa. 206, 208, 8 A. 2d 541, cert. den., 311 U. S. 646; *Commonwealth ex rel. Lewis v. Ashe*, Warden, 335 Pa. 575, 576, 7 A. 2d 296, cert. den., 308 U. S. 596; also *Commonwealth* ex rel. Sloan v. Ashe, Warden, 133 Pa. Superior Ct. 32, 38, 1 A. 2d 788.

Per Curiam.

Statement

On No. 301 Miscellaneous Docket No. 8. "The Honorable Court states that petitioner is at Present Confined in the Eastern State Penitentiary under Prior Sentences Which Are Not Attacked and Which Will Not Expire at the Earliest Until February 25, 1949."

Record of Facts

Petitioner is *Not at present*, confined under prior sentences. It must be understood that *I am, And have been, serving a Life Sentence since November 27, 1944*, as for the Previous Sentences: They were All *Vacated* in Accord-

ance With the Provisions of the Act of Assembly *When Sentence Is Life Imprisonment.*

A Certified Copy of my Indictment and Commitment is now being presented to the Court to show that I am, And [fols. 36-39] have been, serving a Life Sentence since November 27, 1944. So therefore I believe that I am being held in illegal restraint and detention by the Authorities of the Eastern State Penitentiary, Philadelphia, Pennsylvania, And that I am being deprived of my lawful liberty in direct Contravention of the United States Constitution, And:— Now Your Petitioner Prays:

That a Writ of Habeas Corpus shall be made to issue upon herein named defendants, et al., so that the injustices herein legally complained of may be adjudicated in accordance with the Statutes of the United St..tes Constitution, which so provides.

To All of the Above Your Petitioner Shall Forever Pray:

Francis Grygier, Petitioner-in-Person.

Sworn and subscribed to before me this 19th day of October Our Lord, 1945. Walter Tees, Notary Public. My Commission expires Jan. 2, 1949. (Seal.)

[fol. 40] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

301

DOCKET ENTRIES

Miscellaneous Docket No. 8

[Title omitted]

September 13, 1945, Petition for a writ of habeas corpus filed.

Francis Grygier.

Order

October 1, 1945, the within petition is denied.

Per Curiam.

October 26, 1945, Petition for reconsideration of petition for writ of habeas corpus filed.

October 26, 1945, Certified copy of commitment filed.
October 26, 1945, Testimony of June Sessions 1943, filed.

Order

And now, Nov. 27, 1945 the within petition is denied.

Per Curiam.

[fol. 41] In the Supreme Court of Pennsylvania, Eastern District, Philadelphia, Pennsylvania

Commonwealth of Pennsylvania ex rel. Francis Grygier

vs.

C. J. Burke, Warden, Eastern State Penitentiary, Philadelphia, Pennsylvania

Petition for Writ of Certiorari—Filed March 26, 1947

Wherefore Petitioner Respectfully Prays That a Writ of Cert-orori be issued out of and under the seal of this Honorable Court, directed to the Court of Quarter Sessions, of Philadelphia County, Philadelphia, Pennsylvania. Demanding that the Court of Quarter Sessions, Certify and send this Court for its review and examination, on a day certain to be therein named, a full and complete transcript of the records of all preceeding of said Court of the Commonwealth of Pennsylvania in this case, and that the judgment and order of the said Court.

And now to wit this day of — 1947 comes and prays your Honorable Court to issue a writ of Cert-orori based on the following Facts to wit:

That, on the 26th day of July 1943, your petitioner appeared as a defendant in the Court of Quarter Sessions, July Sessions—1943, Philadelphia County, the Honorable Harry S. McDevitt, Justice of said Court in and for the said County, presiding, in answer to the charge as contained in indictment No. 251 and 252, Charging me with the crime of "Burglary, for which crime or crimes after, after pleading Guilty to Receiving Stolen Goods, your petitioner was sentenced to a term of imprisonment by the above named justice of the aforementioned Court of "Not less than five (5) years nor more than ten (10) years in the Eastern State Penitentiary, Philadelphia, Pennsylvania, "to begin at the expiration of his prior parole sentence imposed upon him April 28, 1937.

Your petitioner avers that the tried Judge procedure, and the sentence imposed July 26th, 1943 was unconstitutional, due to the fact that your petitioner was *Twice Tried for the Same Offense.*

1. Original records will verify the following Facts to wit: Petitioner was improperly sentenced for five (5) to ten [fols. 42-43] (10) years on the Bills No. 251 and 252 for Receiving Stolen Goods by the Court of Quarter Sessions of Philadelphia County, July Sessions, 1943.

2. Your Petitioner verily shows to the Honorable Justice of the Supreme Court of Pennsylvania, that the Articles Received from Bills No. 251 and 252, *"Were Received From One Person Only"*. Therefore your relator alleges that there could not of been but *One Bill of Indictment.*

3. (Excess Sentence.)

4. It follows that the sentence of relator imposed by the Court of Quarter Sessions of Philadelphia County "Could Not Exceed No More Than Five (5) Years.

5. Unethical Attitude of the Court in Not Specifying Plainly to the Petitioner the Charge. Therefore Constituting a Definite Miscarrage of Justice.

Francis Grygier, Petitioner-in-Person.

Duly sworn to by Francis Grygier. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 44] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

DOCKET ENTRIES

448. Miscellaneous Docket No. 8

[Title omitted]

March 26, 1947, Petition for writ of habeas corpus filed.
Francis Grygier.

ORDER

And now, April 14th, 1947, within petition is dismissed.
Per Curiam.

[fol. 45] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA ex rel. FRANCIS JOSEPH GRYGER

v.

C. J. BURKE, Warden, Eastern State Penitentiary, Philadelphia, Penna.

PETITION FOR WRIT OF HABEAS CORPUS—Filed May 15, 1947

To the Honorable, the Justices of the Said Court:

And now to wit this — day of May, A. D. 1947, comes your petitioner above named and prays your Honorable Court to issue a writ of Habeas Corpus.

Jurisdiction of This Court

(a) In Com. v. Curry (1926), 285 Pa. 289, this Court said, at page 292: "An application for habeas corpus is proper, however, where the relator is confined under a void or illegal sentence. Com. v. Morgan, 278 Pa. 395. Also Halderman's case, 53 Pa. Super. 554, 557; Com. v. McKenty, 80 Pa. Super. 249, 251."

(b) In September of 1945, your petitioner filed a petition for a writ of habeas corpus before your Honorable Court which was denied on the grounds that your petitioner was at the time serving a sentence given prior to that of the Life Sentence imposed November 27, 1944. "Com. ex rel. Francis Grygier v. Smith Misc. Doc. #8—#301" your petitioner begs to inform the Court that this finding was in error either through a misinterpretation on the part of the Court, or through being misinformed as to the true status of the sentence of your petitioner. On the records of the Eastern State Penitentiary appear the following:

(c) "11/27/44—Philadelphia, Pa. Pleaded guilty in Quarter Session Court of Philadelphia County to "Information as charged of violation of 'Fourth Offender' Act of 1929". Under bill 461, June Term 1943, and sentenced by Judge Joseph L. Kun to Life Imprisonment in the Eastern State Penitentiary. *Note:* This sentence vacates the unexpired portion of sentence

of 4/28/37, also sentences of 7/26/43 and 1/28/44 and 2/25/44.

[fol. 46] (d) 11/28/44 Discharged under "Fourth Offender Act" (P. L. 373—4/29/29, but re-entered as D-8017 to serve sentence imposed 11/27/44.

(c) *Copy of Commitment as of November 27, 1944.*

COURT OF OYER AND TERMINER GENERAL JAIL DELIVERY, AND QUARTER SESSIONS OF THE PEACE, FOR THE CITY AND COUNTY OF PHILADELPHIA, JUNE TERM, 1943

No. 461

THE COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GRYGIER

Sur Charge of 4th Offender Act—1929. Defendant Pleads Guilty as Charged in the Information.

I Certify, that on the 27th day of November A. D. 1944, the above named defendant is adjudged by the Court to pay a fine of One Cent to the Commonwealth, undergo imprisonment in separate or solitary confinement at labor, in the State Penitentiary for the Eastern District of Pennsylvania, for the term of The Rest of His Natural Life to be there fed, clothed, and in all respects treated as the law directs; that he pay the costs of prosecution and stand committed until judgment be fully complied with.

In witness whereof, I have hereunto set my hand and Seal of said Court, this 27th day of November, A. D. 1944.

Sgn. John J. O'Connor, Clerk.

Your petitioner now contends and avers that it is within the jurisdiction of this Court to review the contention of your petitioner that the sentence he is now serving, namely a Life Sentence Only, is an illegal sentence, and that he is being detained and incarcerated in the Eastern State Penitentiary contrary to law, based upon the following facts to wit:

1. That C. J. Burke is the duly appointed Warden of the Eastern State Penitentiary, 21st and Fairmount Avenue, Philadelphia, Pa.

Honorable Court was misinformed as to the sentence your petitioner was serving, to wit: A Life Sentence Only, as all previous sentences had been *vacated* as attested to on the records of the Eastern State Penitentiary. He is therefore serving a *Life Sentence Only.*

[fols. 57-58] 24. Your Petitioner is without remedy except by Writ to your Honorable Court; wherefore your petitioner prays your Honorable Court to issue a Writ of Habeas Corpus directed to the proper authorities releasing your Petitioner from custody forthwith and such other remedy as may apply.

And he will ever pray.

Francis Joseph Gryger.

Duly sworn to by Francis Joseph Gryger. Jurat omitted in printing.

[File endorsement omitted.]

[fols. 59-62] IN THE SUPREME COURT OF PENNSYLVANIA IN AND FOR THE EASTERN DISTRICT

No. 467 Miscl. Dkt. No. 8

[Title omitted]

CERTIFICATE OF RULE—Filed May 20, 1947

May 15, 1947, Petition for writ of habeas corpus filed.

Francis Joseph Gryger.

May 16, 1947 Rule to show cause granted returnable at Harrisburg May 26, 1947. The Clerk of the Quarter Sessions shall certify the record. Answers to be filed by the Warden and by the District Attorney.

Linn, J.

Clerk's Certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 63] SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

[Title omitted]

ANSWER OF C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY—Filed May 21, 1947

To the Honorable, the Judges of the Supreme Court:

C. J. Burke, Warden, Eastern State Penitentiary, Philadelphia, Penna., respectfully represents:

That, Petitioner was sentenced from Philadelphia County, Pennsylvania by the Honorable Joseph L. Kun on Bill #461 June 1943 Term of Court a term of the rest of his Natural Life after pleading guilty as charged in the information filed with the Honorable Joseph L. Kun and sentenced in accordance with the 4th Offender Act of 1929.

Photo-static copy of commitment is attached herewith for the Court's information.

That, the questions raised in the Petition are one of law, of which your realtor has no knowledge and therefore makes no answer.

Respectfully, C. J. Burke, Warden.

Duly sworn to by C. J. Burke. Jurat omitted in printing.

[File endorsement omitted.]

2. That your petitioner is illegally incarcerated in the Eastern State Penitentiary undergoing a sentence of Life Imprisonment under the Fourth Offender Act, an Act of Assembly of the Commonwealth of Pennsylvania, entitled: "The Penal Code of 1939, June 24th, P. L. 872."

3. That the outcome of this sentence was based upon the following previous convictions and sentences.

(a) March 17, 1927, your petitioner was convicted in the Circuit Court of Harford County, Maryland, of Burglary, and sentenced to serve one year at the Maryland House of Correction.

[fol. 47] (b) April 23, 1929, in the Court of Common Pleas your petitioner was sentenced to an Indeterminate to 10 years to the Huntingdon Reformatory on Bill of Indictment #1107 charging burglary, April Sessions, 1929.

(c) November 28, 1930, your petitioner, on a plea of guilty in the Court of Oyer and Terminer in Philadelphia County, Pa., to a charge of Armed Robbery, was sentenced to five to ten years in the Eastern State Penitentiary at Philadelphia, Pa.

(d) April 27, 1937, your petitioner was sentenced on a plea of guilty to Receiving Stolen Goods, Bill #1046, April Session, 1937, and was sentenced in the Court of Oyer and Terminer of Philadelphia County, Pa., to a term of 1½ to 3 years in the Eastern State Penitentiary.

(e) February 25, 1944, your petitioner was taken into Court from the Eastern State Penitentiary and convicted on bill of indictment $461, June Sessions, 1943, Philadelphia County, Pa., charging Burglary and Assault and Battery, and your petitioner was sentenced to 5 to 10 years in the Eastern State Penitentiary.

4. That on or about May 9, 1944, your petitioner was served with an 'Information' relative to Indictment as of June Sessions, 1943, #461, setting forth various crimes as related in paragraph #3, (a) to (e) inclusive. This as prescribed by the Act of Assembly, Act P. L. 872, June 24th, 1939.

5. That on November 27, 1944, your petitioner was taken into court before the Honorable Judge L. Kun, and, without being informed by the Court of the nature of the charge or your petitioner's reasons for his being there, or being asked if he wanted an attorney, the above referred "Information" was read to him by the District Attorney. Your petitioner was then asked if he were the person referred to in the said "Information" and answered in the affirmative.

6. That on the same day, November 27, 1944, your petitioner was sentenced to Life Imprisonment by the Honorable Joseph L. Kun.

7. That your petitioner was returned to the Eastern State Penitentiary on the same day, November 27, 1944, and entered on the records as:

> 11/27/44—Philadelphia, Pa. Pleaded guilty in Quarter Session Court of Philadelphia County to 'Information as charged of violation of 'Fourth Offender Act of 1929' (Under bill #461, June Term 1943,) and sentenced by Judge Joseph L. Kun to Life Imprisonment [fol. 48] in the Eastern State Penitentiary.
>
> Notice: This sentence *vacates* the unexpired portion of sentence of 4/28/37; also sentences of 7/26/43 and 1/28/44 and 2/25/44.
>
> 11-28-44—Discharged under "Fourth Offender Act" P. L. 373—4/29/29, but re-entered as D-8017 to serve sentence imposed 11/27/44.

8. That your petitioner is now, as of this date, May 8, 1947, serving a Life Sentence *Only* in the Eastern State Penitentiary according to the records on file in the Eastern State Penitentiary, and according to Law, as referred to in the Penal Code of 1939, Section 1108, par. (d) of the said 'Fourth Offender Act.'

9. That your petitioner contends and avers that this Life Sentence is illegal, unjust and that It and the Statute which set it up violates every principle of human rights as guaranteed under the Constitutions of the United States and of the Commonwealth of Pennsylvania.

10. That the manner in which it was inflicted upon your petitioner constitutes a travesity of justice in that it violates every principle of the meaning of the word Justice to All

as prescribed and set up by the Federal and State Constitutions to protect the life, liberty and property of the citizens of the United States.

(a) Article V of the United States Constitution distinctly sets forth that "No person shall be held to answer for a capital, otherwise infamous crime, unless on a presentment of indictment of a Grand Jury . . .

(b) Article VI of the United States Constitution distinctly sets forth that "In all criminal prosecutions, the accused shall . . . be confronted with witnesses against him . . . to have compulsory process of obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

(c) Section IX, Article I, of the Constitution of the Commonwealth of Pennsylvania provides that . . . In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet witnesses face to face, to have compulsory process for obtaining witnesses in his favor . . . that he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property unless by the judgment of his peers or the law of the land.

(d) Section X, Article I, of the Constitution of the Commonwealth of Pennsylvania provides . . . No person shall, for and indictable offense, be proceeded against criminally by *Information*, except in cases arising in the land or naval forces, or in the militia, [fol. 49] when in actual service in time of war or public danger . . ."

(It is an established fact and held to be true in all Courts of Law that any Statute which conflicts with the Constitution of the United States or the State in which it was passed, is an unconstitutional Statute, and is therefore, when so proven, to be declared null and void.)

10. Your petitioner avers that when he was taken into court on February 25, 1944, to answer to the charge of

Burglary, Assault and Battery, etc., that he had previously been tried and sentenced on this charge on July 26, 1943, along with Bills #251-262 inclusive, July Sessions 1943, charging Burglary and Receiving Stolen Goods. That your petitioner at the time acknowledged his willingness to plead guilty to Receiving Stolen Goods *only*, but that testimony was taken by the Court on all the charges covering the bills #251-262 July Sessions-1943, as well as the charge of Burglary, Assault and Battery, etc., contained in Bill #461, June Session-1943, as notes of testimony taken at this trial hearing, pages 1 to 13 inclusive, clearly show. That the Honorable Court passed sentence in such a manner:

> "The Court: 'Go back to the Penitentiary. Five to ten in the Penitentiary. You don't deserve to be out.'

that both your petitioner and his attorney, assumed that the defendant (your petitioner) was being sentenced for all counts for which testimony had just been taken. That it was only after your petitioner was taken into court on February 25, 1944, seven months later under bill of indictment #461, June Sessions-1943, that he was made aware of the fact that this charge was still pending over him in the form of an unanswered indictment which was actually answered and should have been disposed of on July 26, 1943.

11. That the act of again taking your petitioner into court to answer these charges with the sole purpose of creating an additional conviction so as to make your petitioner liable to the Fourth Offender Act, was a violation of the "Double Jeopardy" clause provided in both the Federal [fol. 50] and State Constitutions.

12. That when your petitioner was served with the 'Information' as contained in paragraph #4 again covering the same bill of indictment #461, he was incarcerated in the Eastern State Penitentiary undergoing a term of imprisonment and without financial means to prepare a defense to the charges contained in the said 'Information.'

13. That immediately upon receiving this copy of 'Information' your petitioner petitioned the Prison Officials to have access to Books of Law which would be an aid to him in preparing his own defense, and that these Books were denied him by the Prison Authorities.

14. That your petitioner was unfamiliar with the 'Fourth Offender Act', knowing none of its provisions:

(a) That he wrote to the Attorney General of the Commonwealth of Pennsylvania requesting information and advice concerning the Fourth Offender Law. This was under date of March 6, 1946, after receiving the Life sentence, and still being unfamiliar with the Law covering such sentence and still denied all opportunity of acquainting himself with its provisions as to appeal.

(b) That he received a reply from Deputy Attorney General H. J. Woodward, under date of March 26, 1946, informing your petitioner that the Law made it impossible for the Department of Justice to give to your petitioner the information he requested.

(c) That on October 22, 1946, your petitioner wrote to S. Edward Hannestand, Assistant Director, Legislative Reference Bureau, Harrisburg, Pennsylvania, and requested a copy of the Fourt- Offender Act of 1939 under which he had been sentenced.

(d) That this Act was forwarded to him by Mr. Hannestand, but that when it arrived in the penitentiary your petitioner was denied access to it by the Prison Authorities and the said Act was confiscated from the mail, although this was a direct violation of Section VII, Article I, of the Constitution of Pennsylvania which clearly sets forth that: "The printing press shall be free to ever- person who may undertake to examine the proceedings of the legislature or any branch of government, and no law shall ever be made to restrain the right thereof . . ."

[fol. 51] 15. That immediately after the Life Sentence was inflicted upon your petitioner he, still being unfamiliar with the provisions of the Act, petitioned the Board of Trustees of the Eastern State Penitentiary to release funds from the Prisoners' Welfare Fund to hire counsel to appeal his conviction, this after securing hundreds of signers among the prisoners agreeing to release of these funds.

16. That this request was denied by the Board of Trustees of the Eastern State Penitentiary based upon the following letter from the Assistant District Attorney of

Philadelphia County, Franklin E. Barr, to whom they wrote requesting advice as to your petitioner's rights, merits, and so forth, to appeal.

District Attorney's Office, Room 666, City Hall,
Philadelphia 7, Pa.

December 21, 1945.

Mr. Wm. Reinhardt, Secretary, Board of Trustees, Eastern State Penitentiary, Philadelphia, Pa.

DEAR SIR:

(1) Your letter of December 20th to Mr. Maurer, enclosing copy of a letter addressed to the Board of Trustees by Francis Joseph Geyger, handed to me for reply.

(2) This defendant has a long criminal record and is a Fourth Offender. An Information was filed under the Act of Assembly on May 4th, 1944, and served on the defendant on May 9, 1944. The case was then listed before the Court of Quarter Sessions on November 27, 1944, which gave the defendant, a seasoned criminal and knowing the ways of the Court, six months to prepare for it. As required, the whole information was read to him in open Court, setting forth the various charges. He was then asked by the Court whether he was the person referred to in the Information which the District Attorney just read to him under the various names. He answered:

"I am—my name is only Frank Grygier, and Frank Jackson, and Joe McGee; as far as the other names are concerned, they are all the same names,——"

He was then asked by the Court:

"And are you the same person referred to in the various offenses that were read to you by the Crier, as having been committed by you, under one or another of these names?"

A. "Yes, your Honor."

[fol. 52] (3) Under the Act of Assembly that is a plea of guilty to this Information. It was therefore not

necessary that counsel be employed. It was not necessary to have witnesses subpoenaed. It was not necessary to have a jury trial, and as he had plead guilty there could be no verdict.

(4) This defendant in September of 1945, filed a petition for Writ of Habeas Corpus in the Supreme Court of Pennsylvania. On October 1st, his petition for a writ was denied, the Court stating that even if the sentence imposed on him as a fourth offender were in error, the earliest time that he could be released from the penitentiary would be February 25, 1949.

(5) Even if the sentence to life imprisonment is an error, which cannot be so, nothing can be done about it until he has served his back and present time.

Very truly yours, Signed Franklin E. Barr, Assistant District Attorney.

17. That your petitioner then took up a collection among the inmates of the Eastern State Penitentiary in the form of 'pledges' in the amount of several hundreds of dollars in order to hire counsel to prepare an appeal, as he was still without knowledge that this was provided for in the Fourth Offender Act, nor was he ever made acquainted with this provision by any of the Prison Officials who continued to block his every effort to seek redress from what your petitioner at that time, and still contends is an illegal sentence. After this amount was pledged by the inmates and presented to the Board of Trustees of the said institution they immediately refused to allow the other inmates to contribute *one cent* towards your petitioner's defense or appeal.

Your petitioner wishes to call the Honorable Court's attention to paragraphs #2, #3 and #4 and #5 of the above letter from the Assistant District Attorney of Philadelphia County as written to the Board of Trustees of the Eastern State Penitentiary.

Par. #2: ". . . An Information was filed under the Act of Assembly on May 9, 1944. The case was then listed before the Court of Quarter Sessions on November 27, 1944, which gave the defendant, a seasoned criminal and knowing the ways of the Court, six months to prepare for it . . ."

[fol. 53] Par. #3: "Under the Act of Assembly that is a plea of guilty (meaning an affirmative answer to the questions contained in the information). It was therefore not necessary that counsel be employed. It was not necessary to have witnesses subpoenaed. It was not necessary to have a jury trial, and as he had plead guilty there could be no verdict."

Par. #4: "This defendant in September of 1945, filed a petition for writ of habeas corpus in the Supreme Court of Pennsylvania. On October 1st, his petition for a writ was denied, the Court stating that even if the sentence imposed on him as a fourth offender were in error, the earliest time that he could be released from the penitentiary would be February 25, 1949."

Par. #5. "Even if the sentence to life imprisonment is an error, which cannot be so, nothing can be done about it until he has served his back and present time.

18. Your petitioner avers and contends that the text of the various paragraphs of the above letter constitute personal prejudice and presumptuous knowledge of the law not based on fact. That the text clearly defines the personal bias of the District Attorney's office against your petitioner; that this biasness growing out of something unacquainted with on the part of your petitioner was the direct cause of the district attorney's office in collaboration with party or parties unknown to disregard all human rights, to flaunt wantonly and openly any question of law or justice, and to bring about the conviction of your petitioner under the Fourth Offender Act and to subsequently have him sentenced to Life Imprisonment.

19. The contention of the district attorney in paragraph #2 of the letter referred to above that:

". . . the case was listed before the Court of Quarter Sessions on November 27, 1944, which gave the defendant, a seasoned criminal and knowing the ways of the Court, six months to prepare for it . . ."

was absurd, as your petitioner was incarcerated in prison, without funds and denied permission to obtain them when freely offered by other inmates, also was he denied a copy

of the Act itself, all access to any legal forms or books which may have been an aid to him in preparing a defense.

20. Your petitioner further contends and avers that the Act as now appearing on the Statute Books, namely: The Penal Code of 1939, Section 1108, entitled, Second and Subsequently Offenses, P. L. 872, June 24th, 1939, is illegal and unconstitutional based upon the following facts to wit:

[fol. 54] (a) According to the Act itself it compels the defendant to give testimony against himself by answering in the 'affirmative to questions concerning prior convictions and upon the basis of which automatically constitute a *Plea of Guilty* to an infamous crime with the penalty of Life Imprisonment.

(b) Par. #3 of the said Act violates Article V of the United States Constitution which holds: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury . . ."

(c) It violates Section IX, Article I, of the Constitution of the Commonwealth of Pennsylvania which provides that . . . . "In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet witnesses face to face, to have compulsory process for obtaining witnesses in his favor, that he cannot be compelled to give evidence against himself, nor be deprived of his life, liberty or property unless by the judgment of his peers or the law of the land.

(d) It violates Section X, Article I, of the Constitution of the Commonwealth of Pennsylvania which provides . . . . "no person shall, for any indictable offense, be proceeded against criminally by *Information*, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger . . ."

(e) Paragraph #3 stating "Formal Indictment and Conviction Unnecessary.—A person need not be formally indicted and convicted as a previous offender in order to be sentenced under this section" violates

the United States Constitution, the Constitution of Pennsylvania, and opinions of the higher Courts of Pennsylvania, to wit:

Com. v. Francis, 53 Super. 278.

Which upholds the fact that "The Court has no power to sentence defendant without a bill of indictment being drawn and plea entered thereon as provided by the act."

21. Your petitioner avers and contends that the manner of administering the Life Sentence was illegal based upon the following facts to wit:

(a) Your petitioner was Not Represented by Counsel as proscribed by law; nor was he asked if he desired counsel, but rather *denied counsel*, as the letter from the district attorney to the Board of Trustees states: *'no attorney is required in such cases.'*

(b) The unethical attitude of the Court in Not specifying plainly to the Petitioner the Charge and possible results of his answering in the affirmative to the district attorney's reading of the 'Information.'

[fol. 55] (c) Your petitioner was compelled to be a witness against himself due to the fact that he was not instructed as to the nature of the offense and what it constituted for him to answer in the affirmative to questions put to him by the district attorney relating to the nature of the Information; nor was he asked if he desired counsel to be appointed.

(d) That the forcing of your petitioner to appear in Court on February 25, 1944, and made to answer to the charge of Burglary and Assault constituted double jeopardy, as he had already been made to answer for this offense on July 26, 1943.

(e) That the blocking of your petitioner's every step to obtain legal counsel, funds or access to law books by the prison officials both before and after the imposition of the Life Sentence constituted a violation of Constitutional Rights covering Art. I, Sec. I, of the Commonwealth of Pennsylvania.

(f) Paragraph (b) of the Fourth Offender Act in reference to paragraph (a) clearly states that the offender must be guilty of specified crimes to come within the provisions of the Act; yet Bill 1046, April Session 1939, and given in the 'Information' as one of the crimes coming within the Fourth Offender provisions only brought about a conviction of 'Receiving Stolen Goods' on which your petitioner was convicted and sentenced to 1½ to 3 years in the Eastern Penitentiary April 28, 1937. This sentence in itself, although now completed and served was an illegal sentence as it should have been Simple Imprisonment and is not constituted in the specified crimes coming under the Fourth Offender Act.

(g) It is generally conceded in common-law rule that one state court cannot punish for any offense committed in another state . . . Commercial Nat. Bank v. Kirk, 222 Pa. 567; Nesbitt v. Clark, 272 Pa. 161, 165.

It is further recognized that crimes are cognizable and punishable only within the jurisdiction where they are committed . . . . Com. v. Kunzmann, 41 Pa. 429; McCoy v. Kalbach, 51 Super. 364, 375; Simmons v. Com., 5 Bin. 617.

Further crime #1, as listed in the 'Information' occurred on March 27, 1927; this was two years and one month prior to the passage of the Fourth Offender Act of April 29, 1929, under which the penitentiary has your petitioner sentenced, although the Information states the Act of June 24th, P. L. 872 of 1939; in either case creating an Ex Post Facto Law in violation of Art. II., Sec. XVII, of the Constitution of Pennsylvania.

(h) Although Com. v. Francies, 250 Pa. 496, 58 Super. 266, 270 upholds the Act of Assembly of April 15, 1907, P. L. 62, 19 P. S. 241, on the right of waiving a Grand Jury Indictment,

Com. v. Francies, 53 Super. 278 also upholds the fact that "The Court has no power to sentence defendant without a bill of indictment being drawn and plea entered thereon as provided by the act"

[fol. 56] (i) That a bill of indictment, namely #461, June Session, 1943, on which your petitioner had al-

ready answered twice and been sentenced once, could hardly be called a 'Bill of Indictment' covering the Fourth Offender Act, as decided in the above case—Com. v. Francies, 53 Super. 278.

Rather it appears that the Life Sentence if to be given at all should have been given on the indictment covering the 4th offense and not first sentence your petitioner on the indictment for the charge given on the face of it in order to create a 4th offense, then several months later sentence the petitioner again to Life Imprisonment on the same indictment and in the manner in which it was rendered.

(j) It has been clearly established that the conviction of a lesser crime to a certain indictment is a bar to the conviction of a greater crime on the same indictment. Further the prior conviction must be for the same act and crime so that the evidence to support one indictment is sufficient to procure a conviction on the other. (Hilands v. Com., 114 P. 372; Com. v. Shoener, 216 Pa., 71; Com. v. Exler, 61 Super. 423.)

It is difficult for your petitioner to associate the above decisions of the higher courts of the Commonwealth of Pennsylvania with the manner in which he was convicted on the Fourth Offender Act, as it is well established in law that no defendant can be charged in one and the same count with two or more ind-pendent offenses. It appears that the Act of March 31, 1860 P. L. 427, #1; 19 P. S. 261, clearly defines this:

"Every indictment shall be deemed and adjudged sufficient and good in law which charges the crime substantially in the language of the act of the assembly prohibiting the crime, and prescribing the punishment, if any such there be . . ."

22. Your petitioner further avers that when he was taken out of the penitentiary and made to answer to the Fourth Offender Act there were approximately three-hundred other prisoners in the Eastern State Penitentiary liable to the same offense, but that he, your petitioner, was singled out of this vast throng of suspects and made to answer alone.

23. Your petitioner further avers that prior to the filing of the present Petition for a Writ of Habeas Corpus the

[fols. 64-65] EXHIBIT TO ANSWER

Hon. Joseph L. Kun

COURT OF OYER AND TERMINER GENERAL JAIL DELIVERY, AND QUARTER SESSIONS OF THE PEACE, FOR THE CITY AND COUNTY OF PHILADELPHIA, JUNE TERM, 1943

No. 461

THE COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GRYGIER

Sur Charge 4th Offender Act 1929

Defendant Pleads Guilty as Charged in the Information

I Certify, that on the 27th day of Nov. A. D. 1944, the above-named defendant is adjudged by the Court to pay a fine of One Cent to the Commonwealth, undergo imprisonment in separate or solitary confinement at labor, in the State Penitentiary for the Eastern District of Pennsylvania, for the term of the rest of his Natural Life to be there fed, clothed, and in all respects treated as the law directs; that he pay the costs of prosecution and stand committed until judgment be fully complied with.

In Witness Whereof, I have hereunto set my hand and the Seal of said Court, this 27th day of November A. D. 1944.

John J. O'Connor, Clerk.

[fol. 66] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

[Title omitted]

ANSWER OF DISTRICT ATTORNEY OF PHILADELPHIA COUNTY TO PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable, the Justices of the said Court:

The answer of John H. Maurer, District Attorney of Philadelphia County, respectfully represents:

The relator filed a petition in the Supreme Court of Pennsylvania, (Misc. Docket #8, No. 301) which was dis-

missed on October 1, 1945 with a short per Curiam Opinion. A similar petition was filed in the Superior Court of Pennsylvania as of Misc. Docket #5, No. 396, which was dismissed on January 17, 1946 following the Opinion of the Supreme Court. A similar petition was filed by the relator in the Supreme Court of Pennsylvania, dated March 21, 1947 (Misc. Docket #8, No. 448) which was dismissed on April 14, 1947. The present petition is more voluminous, but there are really no new allegations of fact.

The relator was sentenced to life imprisonment by reason of being a Fourth Offender under the provision of Section 1108 of the Act of June 24, 1939, P. L. 872, 18 P. S. § 5108. A copy of the Information is hereto attached and made [fol. 67] part hereof, which Information was served on the relator on May 9, 1944, and he was not brought to trial on it until November 27, 1944, so that he had more than the thirty days required by the Act.

The Act also provides:

> "Such sentences shall be reviewable on appeal by the Supreme or Superior Courts, not only as to alleged legal errors, but also as to the justice thereof. Where any such defendant is indigent, the costs of appeal, together with reasonable counsel fee, shall be paid by the Commonwealth."

No appeal was taken in this matter.

There is no allegation in the present petition nor in any of the former petitions that the relator is not a Fourth Offender in accordance with the provisions of the Act of Assembly, and the petitioner at the time of his trial on the Complaint or Information filed by the District Attorney in accordance with the provisions of the Act, admitted that he was the person named in the Complaint or Information as having been convicted of the offenses set forth therein.

The relator takes the position, incorrectly, that he was being tried for an indictable offense when he was sentenced to life imprisonment, which is untrue. The only question raised at that time was the question as to whether he was a Fourth Offender and therefore should be subject to greater punishment as provided by law. The question of punishment is a matter for the State, but is not a crime.

The relator's complaint of the Opinion of your Honorable Court filed October 1, 1945 is that it states that he is serving

[fol. 68] a prior sentence whereas in fact he is serving nothing but a life sentence and the other sentences were vacated. However, although this may be technically correct, if the life sentence were vacated he would have to serve the previous sentences which would automatically be reinstated.

Wherefore your respondent prays that the petition be dismissed.

John H. Maurer, District Attorney of Philadelphia County, by Franklin E. Barr, First Assistant District Attorney.

Duly sworn to by Franklin E. Barr. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 69] EXHIBIT TO ANSWER

IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE FOR THE COUNTY OF PHILADELPHIA

COUNTY OF PHILADELPHIA, SS:

THE COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GRYGIER, Alias FRANK JACKSON, Alias JOSEPH McGEE, Alias Francis Geyger, Alias Francis Grygeia, Alias Francis Guger.

INFORMATION

Relative to Indictment as of June Sessions, 1943, No. 461

1. Be it remembered by this Information that I, John H. Maurer, District Attorney of the County of Philadelphia, State of Pennsylvania, in pursuance of an Act of Assembly of the said Commonwealth, entitled, "The Penal Code of 1939, June 24th, P. L. 872", which by section 1108 provides for punishment for second and subsequent convictions, do accuse Edward Grygier, alias Frank Jackson, alias Joseph McGee, alias Francis Geyger, alias Francis Grygeia, alias Francis Guger, above named, who under and by the name of Francis Guger, within two years last past, to wit, on

February 25, 1944, before the Honorable Harry S. McDevitt, a Judge of the Court of Oyer and Terminer and General Jail Delivery of the County of Philadelphia, was duly convicted of the crime of burglary perpetrated upon the dwelling of one Raymond Wilde on or about June 20, 1943, charged against him in a certain indictment theretofore duly presented and found true at a Grand Inquest of the said Commonwealth, inquiring for said County of Philadelphia as of June Sessions, 1943, No. 461, as in said indictment particularly set forth, upon which verdict and judgment was duly entered on the 25th day of February, A. D. 1944, that the said defendant undergo and imprisonment in the Eastern State Penitentiary for a term or not less than five nor more than ten years after the expiration of a sentence he was then serving, pursuant to which judgment he is now there incarcerated of having been previously convicted and sentenced of certain other crimes three or more [fol. 70] times, to wit, the crimes of robbery and burglary, that is to say:

2. That the said defendant under the name of Edward Grygier, on March 17th, 1927, was convicted in the Circuit Court of Harford County, Maryland, of Burglary, and sentenced to serve one year at the Maryland House of Correction, and the defendant did undergo an imprisonment in the said Maryland House of Correction from March 17th, 1927 until January 17th, 1928, his discharge therefrom being absolute.

3. That the said defendant at Philadelphia County, under the name of Edward Grygier, charged with burglary of the dwelling of Walter Allen in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of April Sessions, 1929, No. 1107, on which he was convicted of said crime as therein set forth on April 23, 1929, upon which verdict, judgment was duly entered the same day by the Honorable Horace Stern, a judge of said Court, that the defendant undergo imprisonment in Huntingdon Reformatory, in pursuance to which the defendant was confined until September 20, 1930.

4. That the said defendant at Philadelphia County, under the name of Frank Jackson, alias Grygier, in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of November Sessions 1930, No. 1679, was

charged with robbery, being armed with an offensive weapon with intent to rob one Paul Grotzinger, and was duly convicted (plead guilty) of said crime as therein set forth on November 28, 1930, upon which verdict (plea) judgment was duly entered the same day by the Honorable Otto R. Heiligman, a judge of said Court, that the defendant undergo an imprisonment in the Eastern State Penitentiary of not less than five years nor more than ten years in pursuance of which the defendant was there confined until May 28, 1936 when he was discharged on parole.

5. That the said defendant at Philadelphia County under the name of Edward Grygier, alias Frank Jackson, alias Joseph McGee, in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of April [fols. 71-72] Sessions, 1937, No. 1046, charging said defendant with burglary, entering in the night without breaking with intent to commit a felony, and receiving stolen goods of one Edward O'Neill, on April 28, 1937, was duly convicted (plead guilty) of receiving stolen goods, and upon which verdict (plea) judgment was duly entered on the same day by the Honorable Raymond MacNeille, a judge of said court, that the defendant undergo an imprisonment of not less than eighteen months nor more than three years in the Eastern State Penitentiary at the expiration of the unexpired parole sentence imposed on November 28, 1930 on Bill No. 1679 of November Sessions, 1930, and that he was confined there until April 29, 1943, when he was paroled.

Dated, Philadelphia, Pennsylvania, the first day of May, A. D. 1944.

John H. Maurer, District Attorney of Philadelphia County.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

John H. Maurer, being duly sworn according to law, deposes and says that he is the District Attorney of Philadelphia County and that the facts set forth in the foregoing Information are true and correct to the best of his knowledge, information and belief.

John H. Maurer.

Sworn and subscribed to before me this 1st day of May, A. D. 1944. Edw. H. White, Jr., Notary Public.

[fol. 73] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

[Title omitted]

DOCKET ENTRIES

May 15, 1947. Petition for writ of habeas corpus filed.
Francis Joseph Grygier.

May 16, 1947. Rule to show cause granted returnable at Harrisburg May 26, 1947. The Clerk of the Quarter Sessions shall certify the record. Answers to be filed by the Warden and by the District Attorney.

Linn, J.

May 20, 1947. Acceptance of service of rule by the District Attorney filed.

May 21, 1947. Acceptance of service by the Warden filed.

May 21, 1947. Warden's answer filed.,

May 26, 1947. Answer of District Attorney filed.

May 28, 1947. On considering the petition and the answers to the rule to show cause, the rule is discharged and the writ is refused.

Per Curiam.

[fols. 74-76] January 23, 1948, the following order received from the Clerk of the Supreme Court of the United States:

> "On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted and the case is ordered transferred to the appellate docket.
>
> January 19, 1948."

[fols. 77-78] PROTHONOTARY'S CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA,
Supreme Court, Eastern District, ss.

I, Charles A. Waters, Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District

thereof, the said court being a court of record, do hereby certify that the

(1) Petition for Writ of Habeas Corpus, filed February 23, 1945, with order denying petition.
(2) Docket Entries.
(3) Petition for a Writ of Habeas Corpus, filed September 13, 1945, with order denying petition.
(4) Petition for Reconsideration of Petition for Writ of Habeas Corpus, with order denying petition.
(5) Docket Entries.
(6) Petition for Writ of Habeas Corpus, filed March 26, 1947, with order dismissing petition.
(7) Docket Entries.
(8) Petition for Writ of Habeas Corpus filed May 15, 1947, with order endorsed.
(9) Acceptances of Service of Rule By the Warden and the District Attorney.
(10) Warden's Answer.
(11) District Attorney's Answer.
(12) Order on Forma Pauperis Motion and Petition for Writ of Certiorari in the Supreme Court of the United States.
(13) Docket Entries.

all attached hereto, constitute the whole and entire original record in the matter of Commonwealth ex rel. Francis Joseph Gryger vs. C. J. Burke, Warden Eastern State Penitentiary, Nos. 266, 301, 448 and 467 Miscellaneous Docket No. 8.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court, at Philadelphia, in the County of Philadelphia, in the said Eastern District of Pennsylvania, this thirtieth day of January in the year of our Lord One Thousand Nine Hundred and Forty-eight.

C. A. Waters, Prothonotary. (Seal.)

[fol. 79] In Re: Francis Joseph Gryger

There is also attached hereto the following original Bills of Indictment and papers belonging to the record of the Court of Quarter Sessions of Philadelphia County:

Bills of Indictment 671, 672 April Sessions, 1928
Bill of Indictment [illegible] April Sessions, 1929

Bill of Indictment 1679 and 1680 November Sessions, 1930
Bills of Indictment 1046, 1047 April Sessions, 1937
Bills of Indictment 461, 462 June Sessions 1943
Bills of Indictment 251 to 262 inc. July Sessions, 1943
Copy of Testimony dated November 27, 1944
Copy of Prisoner's Criminal Record.

C. A. Waters, Prothonotary.

[fol. 80] IN THE COURT OF QUARTER SESSIONS FOR THE CITY AND COUNTY OF PHILADELPHIA

COMMONWEALTH

vs.

EDWARD GRYGIER

April Sessions, 1928. Nos. 671 and 672

Sur charge: *A. & B. and C. C. D. W.*

PETITION FOR PAROLE—Filed November 26, 1928

To the Honorable the Judges of the said Court:

The petition of Josephine Grygier respectfully represents:

That she is the mother of the above named Edward Grygier, who pleaded Guilty to the charges in this case and was sentenced by Hon. Frank Smith on April 17, 1928 to a term of one year in the Philadelphia County Prison, where he is now confined.

Your petitioner further represents that the said Edward Grygier is eighteen years of age, unmarried, and has never before been in any trouble whatsoever.

Your petitioner also avers that she is the mother of two smaller children and that Edward was of the greatest assistance to her in the support of their home. That he was steadily employed in a Plush Mill at good wages at the time of his arrest. Your petitioner feels sure that her son has learned a valuable and salutary lesson through the imprisonment he has already suffered in this case and can be relied upon to go absolutely straight in the future.

Therefore, your petitioner now prays that Your Honorable Court will parole the said Edward Grygier and place

him in charge of and under the supervision of the designated Probation Officer of this Court in accordance with the provisions of the Act of Assembly approved June 19, 1911.

And she will ever pray &c.

Josephine Grygier.

[fol. 81] *Duly sworn to by Josephine Grygier. Jurat omitted in printing.*

[File endorsement omitted.]

[fols. 82-83] DECREE

And Now, to wit this 10 day of December A. D. 1928, upon consideration of the facts set forth in the foregoing petition, and a hearing duly held thereon, it is hereby ordered, decreed and adjudged that the said Edward Grygier be paroled in the custody of, and under the supervision of, the designated Probation Officer of this Court in accordance with the provisions of the Act of Assembly approved June 19, 1911. Probation period 5 years.

Frank Smith, Judge.

[fol. 84] IN THE COURT OF QUARTER SESSIONS OF THE PEACE, OF THE COUNTY OF PHILADELPHIA, APRIL SESSIONS, 1928

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Grygier late of the said County, yeoman, on the third day of April in the year of our Lord one thousand nine hundred and twenty-eight, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, in and upon one Frank J. Moore did make an assault, and the said *Frank J. Moore* did beat, wound and ill-treat and other wrongs to the said Frank J. Moore then and there did, to the great damage of the said Frank J. Moore: contrary to the form of the Act of the General Assembly in such case made and

provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John Monaghan, District Attorney.

[fol. 85] Witnesses: Jos. Clark 2498, Corp. Moore 101, 20th Dist. Bail, $800. Costello, Magistrate.

[Endorsed:] No. 671. April Sessions, 1928. Commonwealth vs. Edward Grygiea. Assault and Battery on Frank J. Moore. True Bill April 16, 1928. W. G. Kendrick, Foreman. 4/17/28. The Defendant being arraigned, plead guilty. Dist. Atty. sim. et issue. Eo Die Verdict and Sentence, One (1) year, E. P. by the Court, —— ——.
April 17, 1928-453. December 10, 1928-453.

[fol. 86] In the Court of Quarter Sessions of the Peace, of the County of Philadelphia

Bill of Indictment

April Sessions, 1928.

County of Philadelphia, ss.:

The Grand Inquest of the Commonwealth of Pennsylvania inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Grygiea, late of the said County, yeoman, on the third day of April in the year of our Lord one thousand nine hundred and twenty-eight, at the County aforesaid, and within the jurisdiction of this Court, did unlawfully and maliciously carry on and about the person of him the said Edward Grygiea a certain concealed deadly weapon commonly called an automatic pistol, the said pistol being then and there loaded with powder and bullet, with an intent then and there, with the pistol so loaded as aforesaid, unlawfully and maliciously to do bodily harm to some other person to the Inquest aforesaid yet unknown, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John Monaghan, District Attorney.

[fol. 87] Witnesses: Jos. Clark 2498; Corp. Moore 101. 20th Dist. Bail, $800. Costello, Magistrate.

[Endorsed:] No. 672. April Sessions, 1928. Commonwealth vs. Edward Grygiea. Carrying Concealed Deadly Weapons. True Bill. W. G. Kendrick, Foreman. April 16, 1928. 4/17/28. The Defendant being arraigned, plead Guilty. Sentence on 671.

Apr. 17, 1928 453.

[fol. 88] In the Court of Oyer and Terminer of the County of Philadelphia

Bill of Indictment

April Sessions, 1929.

County of Philadelphia, ss.:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Grygier, late of the said County, minor, on the eighteenth day of April in the year of our Lord one thousand nine hundred and twenty-nine about the hour of eleven in the night of the same day, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., the building and dwelling house then and there situate of Walter Allen unlawfully, wilfully, maliciously, feloniously and burglariously did break and enter, with intent the goods and chattels, moneys and property of him the said Walter Allen in the said building and dwelling house then and there being, feloniously and burglariously to steal, take and carry away; and then and there in the said building and dwelling house, certain property, to wit, two strings of beads, together of the value of twenty-five dollars; four suits of men's clothes, together of the value of four hundred dollars; two coats, together of the value of seventy-five dollars; and four dresses, together of the value of four hundred dollars; altogether of the value of nine hundred dollars, of the goods and chattels, moneys and property of him the said Walter Allen in the said building and dwelling house then and there being found, feloniously and burglariously did steal, take and carry away, contrary to the form of the act of the general assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 88a] And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said Edward Grygier on the day and year aforesaid, at the country aforesaid, and within the jurisdiction of this court, with force and arms, etc., did about the hour of eleven in the night of the same day, unlawfully, wilfully, maliciously and feloniously enter the building and dwelling house of him the said Walter Allen then and there situate, without breaking the same, with intent then and there certain property, to wit, two strings of beads, together of the value of twenty-five dollars; four suits of men's clothes, together of the value of four hundred dollars; two coats, together of the value of seventy-five dollars; and four dresses, together of the value of four hundred dollars; all together of the value nine hundred dollars; the goods and chattels, moneys and property of him the said Walter Allen to feloniously steal, take and carry away contrary to the form of the act of the general assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 89] And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid do further present, That the said Edward Grygier afterwards, to wit: On the same day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., the goods and chattels, moneys and property aforesaid by some ill-disposed person (to the Jurors aforesaid yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain did receive and have (the said Edward Grygier then and there well knowing the goods and chattels, moneys and property last mentioned to have been feloniously and burglariously stolen, taken and carried away), contrary to the form of the act of the general assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John Monaghan, District Attorney.

[fol. 90] Witnesses: Walter E. Allen, 1815 Butler St. Det. Bradford, McDowell, Central. Milton Rose, 2954 Kensington Ave. Oswald, Magistrate.

[Endorsed:] No. 1107. April Sessions, 1929. Commonwealth vs. Edward Grygier, 757 E. Ontario St. Burglary,

Entering in the Night, without Breaking, with intent to commit a Felony. Receiving Stolen Goods. True Bill. James C. Lynch, Foreman. April 22, 1929. 4/23/29. The Defendant being arraigned, plead not guilty. Eo Die verdict guilty and sentenced Huntingdon Reformatory. By the Court, Horace Stern, J.

Apr. 23, 1929. 453.

[fols. 91-92] In the Court of Oyer and Terminer and General Jail Delivery of the County of Philadelphia, November Sessions, 1930

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Frank Jackson alias Grygier, late of the said County, yeoman, on the twenty-second day of November in the year of our Lord one thousand nine hundred and thirty at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., being armed with an offensive weapon and with an offensive instrument, in and upon one Paul Grotzinger feloniously did make an assault, and the said Paul Grotzinger in bodily fear and danger of his life, then and there feloniously did put, and from the person of one Paul Grotzinger, the sum of twenty-six dollars and fifty cents, in lawful money of the United States, of the value of twenty-six dollars and fifty cents, of the goods and chattels, moneys and property of the said Paul Grotzinger, then and there feloniously and violently did rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Frank Jackson alias Grygier, on the twenty-second day of November, in the year of our Lord one thousand nine hundred and thirty, at the County aforesaid, and within the jurisdiction of the Court aforesaid, with force and arms,

etc., being armed with an offensive weapon and with an offensive instrument, in and upon the said Paul Grotzinger feloniously did make an assault, with an intent, from the [fol. 93] person of the said Paul Grotzinger, the sum of twenty-six dollars and fifty cents, in lawful money of the United States of the value of twenty-six dollars and fifty cents, of the goods and chattels, moneys and property of the said Paul Grotzinger then and there feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly, in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 94] Witnesses: Paul Grotzinger, 1000 E. Tioga St. Off. Shay 1573 30th Dist. Lindell, Magistrate.

[Endorsed:] No. 1679. November Sessions, 1930. Commonwealth vs. Frank Jackson alias Grygier, 2248 Simon St. ? or 2027 Hart Lane. 1st Count, Robbery.—Being armed with an offensive weapon. 2nd Count, Assault.—Being armed with an offensive weapon with an intent to rob. True Bill. M. Longhead, Foreman. Nov. 26, 1930. 11/28/30. The Defendant being arraigned, pleads guilty Eo Die. Sent to not less than 5 years nor more than 10 years. E. P., by the Court.

Nov. 28, 1930. 453.

[fol. 95] In the Court of Quarter Sessions of the Peace, of the County of Philadelphia, November Sessions, 1930

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Frank Jackson alias Grygier, late of the said County, Yeoman, on the twenty-second day of November in the year of our Lord one thousand nine hundred and thirty, at the County aforesaid, and within the jurisdiction of this Court, feloniously, wilfully and maliciously did enter the building and store there situate of Paul Grotzinger with an

intent, the goods and chattels, moneys and property in the said building and store, from the person of Paul Grotzinger then and there being found, violently and feloniously to rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 96] Witnesses: Paul Grotzinger, 1000 E. Tioga St. Off. Shay, 1573 30th Dist. Lindell, Magistrate.

[Endorsed:] No. 1680. November Sessions, 1930. Commonwealth vs. Frank Jackson alias Grygier. 1st Count—Entering With Intent to Rob. Nov. 26, 1930. True Bill. M. Longhead, Foreman. 11/28/30. The Defendant being arraigned, plead guilty. Sentence on 1679.

Nov. 28, 1930, 453.

[fol. 97] IN THE COURT OF OYER AND TERMINER AND QUARTER SESSIONS OF THE PEACE FOR THE COUNTY OF PHILADELPHIA, APRIL SESSIONS, 1937

No. 1046

COMMONWEALTH

vs.

EDWARD GRYGIER

Enter my appearance for the above named defendant.

Thomas E. Cogan, Defender.

To Clerk, Q. S., Phila. County.

[fol. 98] IN THE COURT OF OYER AND TERMINER OF THE COUNTY OF PHILADELPHIA, APRIL SESSIONS, 1937

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Grygier alias Frank Jackson alias Joseph McGee, late of

the said County, Yeoman on the sixteenth day of April in the year of our Lord one thousand nine hundred and thirty-seven about the hour of eleven in the night of the same day, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., the building and dwelling house then and there situate of Edward O'Neill unlawfully, wilfully, maliciously, feloniously and burglariously did break and enter, with intent the goods and chattels, moneys and property of him the said Edward O'Neill in the said building and dwelling house then and there being, feloniously and burglariously to steal, take and carry away; and then and there in the said building and dwelling house, certain property, to wit, one silver table set, of the value of one hundred and twenty-five dollars; and four men's rings, one lady's watch, one lady's ring, six fraternal charms, one revolver, one vacuum cleaner and one man's hat, together of the value of one hundred and twenty-five dollars; altogether of the value of two hundred and fifty dollars, of the goods and chattels, moneys and property of him the said Edward O'Neill in the said building and dwelling house then and there being found, feloniously and burglariously did steal, take and carry away, contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 99] And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Grygier alias Frank Jackson alias Joseph McGee, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., did about the hour of eleven in the night of the same day, unlawfully, wilfully, maliciously and feloniously enter the building and dwelling house of him the said Edward O'Neill then and there situate, without breaking the same, with intent then and there the goods and chattels, moneys and property of him the said Edward O'Neill to feloniously steal, take and carry away contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 100] And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present That the said Edward Grygier alias Frank Jackson alias Joseph

McGee afterwards, to wit; On the same day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., the goods and chattels, moneys and property aforesaid by some ill-disposed person (to the Jurors aforesaid yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain did receive and have (the said Edward Grygier alias Frank Jackson alias Joseph McGee then and there well knowing the goods and chattels, moneys and property last mentioned to have been feloniously and burglariously stolen, taken and carried away), contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Charles F. Kelley, District Attorney.

[fol. 101] Witnesses: Off Davis 2868, Peterson 4246, 24th Dist. Det McCourt 94, Lennon 170, Burke 142, 2rd Det. Div. Sarah O'Neill, Edward O'Neill, 7406 Briar Rd. Holland, Magistrate.

[Endorsed:] No. 1046. April Sessions, 1937. Commonwealth vs. Edward Grygier alias Frank Jackson alias Joseph McGee, 477 Green St., Brooklyn, N. Y. Burglary. True Bill. April 26, 1937. Edw. —. ——, Jr., Foreman. 4/28/37. The Defendant being arraigned, plead guilty 3rd count. Verdict, Eo Die.

4/28/37. Sentence 18 mos. to 3 years. E. P. at expiration of unexpired parole. Sentence imposed 11/28/30 on bill 1679 of November, 1930. By the Court, R. MacNeille, J. Apr. 28, 1937, 453.

[fol. 102] In the Court of Quarter Sessions of the Peace, of the County of Philadelphia, April Sessions, 1937.

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward

Grygier alias Frank Jackson alias Joseph McGee late of the said County, yeoman on the sixteenth day of April in the year of our Lord one thousand nine hundred and thirty seven, at the County aforesaid, and within the jurisdiction of this Court, did unlawfully carry concealed upon his person a certain deadly weapon, commonly called a revolver, said revolver being then and there loaded with powder and bullet with the intent therewith unlawfully and maliciously to do injury to some other person to the Grand Inquest aforesaid as yet unknown: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Grygier alias Frank Jackson alias Joseph McGee on the said sixteenth day of April, in the year of our Lord one thousand nine hundred and thirty seven, at the county aforesaid, and within the jurisdiction of this Court, did unlawfully carry, in a place not his abode nor his fixed place of business, to wit, on or about the person of him the said Edward Grygier alias Frank Jackson alias Joseph McGee a firearm, to wit, a revolver with a barrel less than twelve inches, without a license therefor as required by law; said firearm not being an antique unsuitable for use and not possessed as a curiosity or ornament: contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

Charles F. Kelley, District Attorney.

[fol. 103] Witnesses: Off Davis 2868. Peterson 4246. 24th Dist. Det. McCourt 94; Lennon 170; Burke 142; 3rd Det. Div. Sarah O'Neill, Edw. O'Neill, 7406 Briar Rd., Holland, Magistrate.

[Endorsed:] No. 1047. April Sessions, 1937. Commonwealth vs. Edward Grygier alias Frank Jackson alias Joseph McGee, 477 Green St., Brooklyn, N. Y. True Bill April 26, 1937. —— ——, Foreman. 4/28/37. The Defendant being arraigned, plead guilty. Verdict, Eo Die. Sentence on 1046.

Apr. 28, 1937. 453.

[fol. 104] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER-SESSIONS OF THE PEACE FOR THE COUNTY OF PHILADELPHIA

COUNTY OF PHILADELPHIA, SS:

THE COMMONWEALTH OF PENNSYLVANIA

VS.

EDWARD GRYGIER, Alias Frank Jackson, Alias Joseph McGee, Alias Francis Geyger, Alias Francis Grygeia, Alias Francis Guger

INFORMATION

Relative to Indictment as of June Sessions, 1943, No. 461

1. Be it remembered by this Information that I, John H. Maurer, District Attorney of the County of Philadelphia, State of Pennsylvania, in pursuance of an Act of Assembly of the said Commonwealth, entitled, "The Penal Code of 1939, June 24th, P. L. 872", which by section 1108 provides for punishment for second and subsequent convictions, do accuse Edward Grygier, alias Frank Jackson, alias Joseph McGee, alias Francis Geyger, alias Francis Grygeia, alias Francis Guger, above named who under and by the name of Francis Guger, within two years last past, to wit, on February 25, 1944, before the Honorable Harry S. McDevitt, a Judge of the Court of Oyer and Terminer and General Jail Delivery of the County of Philadelphia, was duly convicted of the crime of burglary perpetrated upon the dwelling of one Raymond Wilde on or about June 20, 1943, charged against him in a certain indictment theretofore duly presented and found true at a Grand Inquest of the said Commonwealth, inquiring for said County of Philadelphia as of June Sessions, 1943, No. 461, as in said indictment particularly set forth, upon which verdict and judgment was duly entered on the 25th day of February, A. D. 1944, that the said defendant undergo an imprisonment in the Eastern State Penitentiary for a term or not less than five nor more than ten years after the expiration of a sentence he was then serving, pursuant to which judgment he is now there incarcerated of having been previously convicted and sentenced of certain other crimes three or more times, to

[fol. 105] wit, the crimes of robbery and burglary, that is to say:

2. That the said defendant under the name of Edward Grygier, on March 17th, 1927, was convicted in the Circuit Court of Harford County, Maryland, of Burglary, and sentenced to serve one year at the Maryland House of Correction, and the defendant did undergo an imprisonment in the said Maryland House of Correction from March 17th, 1927 until January 17th, 1928, his discharge therefrom being absolute.

3. That the said defendant at Philadelphia County, under the name of Edward Grygier, charged with burglary of the dwelling of Walter Allen in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of April Sessions, 1929, No. 1107, on which he was convicted of said crime as therein set forth on April 23, 1929, upon which verdict, judgment was duly entered the same day by the Honorable Horace Stern, a judge of said Court, that the defendant undergo imprisonment in Huntingdon Reformatory, in pursuance to which the defendant was confined until September 20, 1930.

4. That the said defendant at Philadelphia County, under the name of Frank Jackson, alias Grygier, in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of Novembere Sessions 1930, No. 1679, was charged with robbery, being armed with an offensive weapon with intent to rob one Paul Grotzinger, and was duly convicted (plead guilty) of said crime as therein set forth on November 28, 1930, upon which verdict (plea), judgment was duly entered the same day by the Honorable Otto R. Heiligman, a judge of said Court, that the defendant undergo an imprisonment in the Eastern State Penitentiary of not less than five years nor more than ten years in pursuance of which the defendant was there confined until May 28, 1936 when he was discharged on parole.

5. That the said defendant at Philadelphia County under the name of Edward Grygier, alias Frank Jackson, alias Joseph McGee, in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of April Sessions, 1937, No. 1046, charging said defendant with [fol. 106] burglary, entering in the night without breaking with intent to commit a felony, and receiving stolen goods

of one Edward O'Neill, on April 28, 1937, was duly convicted (plead guilty) of receiving stolen goods, and upon which verdict (plea) judgment was duly entered on the same day by the Honorable Raymond MacNeille, a judge of said court, that the defendant undergo an imprisonment of not less than eighteen months nor more than three years in the Eastern State Penitentiary at the expiration of the unexpired parole sentence imposed on November 28, 1930 on Bill No. 1679 of November Sessions, 1930, and that he was confined there until April 29, 1943, when he was paroled.

Dated: Philadelphia, Pennsylvania, the first day of May, A. D. 1944.

John H. Maurer, District Attorney of Philadelphia County.

Duly sworn to by John H. Maurer. Jurat omitted in printing.

[fol. 107] Witnesses: Geo. F. Richardson, Det. Bureau, City Hall.

[Endorsed:] No. 461. June Sessions, 1943. Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace for Philadelphia County. Commonwealth of Pennsylvania v. Edward Grygier, alias Frank Jackson, alias Joseph McGee, alias Francis Gyger, alias Francis Grygeia, alias Francis Guger. Information. Under the Penal Code of 1939, June 24th, P. L. 872, authorizing the sentencing of persons convicted for a second or subsequent offense of certain crimes to additional prison terms and to imprisonment for life. Filed May 4th, 1944. 11/27/44. The Defendant being arraigned pleads —. District Attorney sim et issue. Verdict and Sentence 11/27/44. The information bring read to the defendant in open court, he was asked by the court whether he was the person named in the information and whether he was the same person as charged with the offenses set forth in the information. Eo die, the defendant confesses that he is the same person. Sentence: the defendant is hereby sentenced to the Eastern State Penitentiary for the remainder of his natural life. And the Sentence 2/25/44 is vacated by the Court. ——, ——, J.

Nov. 27, 1944. 453.

[fols. 108-109] QUARTER SESSIONS COURT, JUNE TERM, 1943

No. 461-462

COMMONWEALTH

vs.

FRANCIS J. GRYGIER

ENTRY OF APPEARANCE—Filed June 28, 1943

To the Clerk of Court:

Kindly enter my appearance for Francis J. Grygier, the Defendant in the above entitled case.

Philip Werner, Attorney for Defendant.

[File endorsement omitted.]

[fol. 110] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE FOR THE COUNTY OF PHILADELPHIA, JUNE SESSIONS, 1943

No. 461

COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GRYGIER, alias Frank Jackson, alias Joseph McGee, alias Francis Geyger, alias Francis Grygeia, alias Francis Guger

AFFIDAVIT OF SERVICE OF COPY OF INFORMATION PURSUANT TO THE PENAL CODE OF 1939, JUNE 24TH, P. L. 872—Filed May 9, 1944

COMMONWEALTH OF PENNSYLVANIA,
City and County of Philadelphia, ss:

Howard A. Cunningham, being duly sworn according to law, deposes and says:

That he is a County Detective of the City and County of Philadelphia, and that by direction of John H. Maurer, District Attorney of said County, and pursuant to An Act of Assembly, entitled "The P l Code of 1939, June 24th,

P. L. 872", he did on the 5th day of May, A. D. 1944, at the Eastern State Penitentiary, Philadelphia, Pa., at 12:30 o'clock P. M. Eastern War Time, and in the presence of Walter Tees, Parole Officer, serve upon Edward Grygier, alias Frank Jackson, alias Joseph McGee, alias Francis Geyger, alias Francis Grygeia, alias Francis Guger, the above named defendant, personally, a true and correct copy of the Information against him filed by the District Attorney on May 4th, 1944, under the above Act of Assembly, as of June Sessions, 1943, No. 461, in the above captioned Courts, and also did serve upon the said defendant notice (copy of which is hereto attached) and did make known the contents of said Information to the said defendant and handed him the said Information personally with the said notice.

Howard N. Cunningham.

Sworn to and subscribed before me this 9th day of May, A. D. 1944. Nathan Stup, Notary Public. My Commission expires Jan. 27, 1945. (Seal.)

[fols. 111-112] In the Court of Over and Terminer and General Jail Delivery and Quarter Sessions of the Peace for the County of Philadelphia

Commonwealth of Pennsylvania

vs.

Edward Grygier, alias Frank Jackson, alias Joseph McGee, alias Francis Geyger, alias Francis Grygeia, alias Francis Guger

Information Relative to Indictment as of June Sessions, 1944, No. 461

Philadelphia, May 1st, 1944.

To Edward Grygier, alias Frank Jackson, alias Joseph McGee, alias Francis Geyger, alias Francis Grygeia, alias Francis Guger, above named defendant.

Sir:

You are hereby notified that on May 1st, 1944, the District Attorney of Philadelphia County duly filed in the Court of

Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace of said County, on information required by law to be filed by him under the provisions of an Act of Assembly of the Commonwealth of Pennsylvania, entitled "The Penal Code of 1939, June 24th, P. L. 872" accusing you of having been previously convicted of certain other crimes and offenses as charged in said information, and included in said Act of Assembly, authorizing the sentencing of persons convicted of a second or subsequent offense of certain crimes to additional prison terms and to imprisonment for life; and in pursuance of the provisions of said Act of Assembly, a true and correct copy of said Information is handed to you and served upon you.

John H. Maurer, District Attorney, Philadelphia County.

[fol. 113] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE, FOR THE COUNTY OF PHILADELPHIA, JUNE SESSIONS, 1943

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, that Francis Guger, late of the said county, yeoman, on the twentieth day of June, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of one Raymond Wilde, unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Raymond Wilde, in said building and dwelling then and there being feloniously and burglariously attempt to steal, take and carry away; contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said defendant above named, afterwards, to wit, on the day and

year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 114] Witnesses: Det Frank Flanagan 106 Jos. Duffy 4th Det Div., Harry Haas 4140 "L" St., Raymond Wilde 4152 "L" St. Scene of Crime: 4142 "L" St. Bail, $1500. Williams, Magistrate.

[Endorsed:] No. 461, June Sessions, 1943. Burglary. June 23, 1943. True Bill. Wale J. Lightfoot, Foreman. 6/28/43. The Defendant being arraigned, plead Not Guilty. Dist. Atty. sim. et issue. 2/25/44. Verdict, Guilty. Sentence, not less than (5) Five nor more than (10) years, at separate and solitary confinement in the Eastern State Penitentiary; to be computed from after expiration of present sentence. By the Court, H. S. McDevitt, Judge. 1046 April 1937—251-252 July 1943 and Bill 144, 1943 of November of Montgomery County.

Jun. 28, 1943, 453. Jul. 12, 1943, 653. Jul. 26, 1943, 653. Aug. 11, 1943, 453. Feb. 24, 1944, 453.

[fol. 115] In the Court of Quarter Sessions of the Peace, of the County of Philadelphia, June Sessions, 1943

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, that Francis Guger, late of the said County, yeoman, on the twentieth

day of June in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., Harry Hass, in and upon one Harry Hass, in the peace of God and the said Commonwealth then and there being, did make an assault, and the said Harry Hass, did beat, wound and ill-treat, and other wrongs to the said Harry Hass, then and there did, to the great damage of the said Harry Hass: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Francis Guger afterwards, to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., on the said Harry Hass, in the peace of God and of the said Commonwealth then and there being, did make another assault, and then and there unlawfully and maliciously did inflict grievous bodily harm upon the said Harry Hass: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commo-wealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 116] Witnesses: Det. Frank Flanagan 106, Jos. Duffy 4th Det. Div. Harry Haas 4140 "L" St., Raymond Wilde 4142 "L" St. Scene of Crime: 4142 "L" St. Bail $1500. Williams, Magistrate.

[Endorsed:] No. 462. June Sessions, 1943. Francis Guger R. D. 1, Pottstown, Pa. 1. Assault and Battery. 2. Aggravated Assault and Battery on Harry Hass. June 23, 1943. True Bill. Wale J. Lightfoot, Foreman. 6/28/43. The Defendant being arraigned, plead Not Guilty. Dist. Atty. sim. et issue. 2/25/44. Verdict, Guilty. 2/25/44. Sentence, Suspended. Harry S. McDevitt, Judge.

Jun. 28, 1943, 453. Jul. 12, 1943, 653. Jul. 26, 1943, 653. Aug. 11, 1943, 453. Feb. 24, 1944, 453.

[fol. 117] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE, FOR THE COUNTY OF PHILADELPHIA, JULY SESSIONS, 1943

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, that Francis Gryger, late of the said county, yeoman, on the thirty-first day of May, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of one Asher Davidson, unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Asher Davidson, in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling, certain property, to wit, one Silver Set, of the value of one hundred and fifty dollars, two ladies Pins, together of the value of twenty dollars, one Lapel Pin, of the value of ten dollars, one Brooch, of the value of ten dollars, three Bracelets, together of the value of thirty dollars, one String of Pearls, of the value of five dollars, and the sum of five dollars, in lawful money of the United States, of the value of five dollars, altogether, of the value of two hundred and thirty dollars, of the goods, chattels, moneys and property of the said Asher Davidson, then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before

feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 118] Witnesses: Detc. Flanagan 106, Off. Boyle, Det. Duffy 64, P. S. Police, Devon Barracks, Devon, Pa. Steve Salata, Warwick Settlement #102, R. D. #1, Pottstown, Pa. Asher Davidson, 6249 Mulberry St. Scene of Crime: 6249 Mulberry St. Bail, $——. C. Connor, Thos. Magistrate.

[Endorsed:] No. 251. July Sessions, 1943. Commonwealth vs. Francis Gryger, 102 Warwick Settlement #102, R. D. #1, Pottstown, Pa. Burglary. Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead Guilty 2nd Count. Dist. Atty. sim. et issue. Verdict, 7/26/43. Sentence, not less than (2½) years nor more than (5) years at separate and solitary confinement in the Eastern State Penitentiary to be computed from after unexpired sentence on Bill 1046, April 1937. By the Court, H. S. McDevitt, Judge.

Jul. 26, 1943, 653.

———

[fol. 119] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia, July Sessions, 1943

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Francis Gryger, late of the said county, yeoman, on the nineteenth day of May, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within

the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of one Roy Ries, unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels moneys and property of the said Roy Ries, in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling, certain property, to wit, two Rings, together of the value of one hundred and sixty-two dollars, and one Wrist Watch, of the value of thirty dollars, altogether, of the value of one hundred and ninety-two dollars, of the goods, chattels, moneys and property of the said Roy Ries, then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid upon their oaths and affirmations aforesaid, do further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; — the said defendant — above named, then and there fell knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fols. 120-121] [Endorsed:] No. 252 July Sessions, 1943. Commonwealth vs. Francis Gryger. #102 Warwick Settlement R. D. #1, Pottstown, Pa. Burglary; Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefevre, Foreman. 7/26/43: The Defendant being arraigned, plead Guilty 2d Count. Dist. Atty. sim. et issue. Verdict, 7/26/43. Sentence not less than (2½) years nor more than (5) years at separate and solitary confinement in the

Eastern State Penitentiary, to be computed from after sentence on Bill 251 July, 1943. By the Court, H. S. McDevitt, Judge. Witnesses: Detc. Flanagan 106, Det. Duffy 64, Off. Boyle, P. S. Police Devon Barracks, Devon, Pa. Steve Salata, #102b Warwick Settlement, R. D. #1, Pottstown, Pa. Roy Ries, 6837 Horrock St. Scene of Crime: 6837 Horrocks St. Bail, $——: C. Costs, $——. Connor, Thos., Magistrate.

[fol. 122] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia, July Sessions, 1943.

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Francis Gryger, late of the said county, yeoman, on the first day of May, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of one George Reidel, unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said George Reidel, in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling, certain property, to wit, one Wrist Watch, of the value of fifty-five dollars, one Camera, of the value of twenty-three dollars, one Leather Case, of the value of five dollars, and the sum of one hundred and forty-five dollars, in lawful money of the United States, of the value of one hundred and forty-five dollars, altogether, of the value of two hundred and twenty-eight dollars, of the goods, chattels, moneys and property of the said George Reidel, then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, to further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 123] [Endorsed:] No. 253. July Sessions, 1943. Commonwealth vs. Francis Gryger, #102 Warwick Settlement, R. D. # 1, Pottstown, Pa. Burglary; Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead Guilty 2nd Count. Dist. Atty. sim et issue. 7/26/43. Sentence, on bills 251-252. Witnesses: Detc. Flanagan 106. Det. Duffy 64. Off. Boyle, P. S. Police, Devon Barracks, Devon, Pa. Steve Salata, #102 Warwick Settlement, R. D. #1, Pottstown, Pa. George Reidel, 6312 Jackson St. Scene of Crime: 6312 Jackson St. Bail, $——. C. Costs, &——. Connor, Thos., Magistrate.

[fol. 124] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia

Bill of Indictment

July Sessions, 1943.

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Francis

Gryger, late of the said county, yeoman, on the twelfth day of May, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court with force and arms, etc., the building and dwelling then and there situate of one Joseph Godfrey, unlawfully, wilfully, maliciously, feloniously and burglariousy did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Joseph Godfrey, in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling, certain property, to wit, one Class Ring, of the value of six dollars, and the sum of one hundred and fifty-nine dollars, in lawful money of the United States, of the value of one hundred and fifty-nine dollars, altogether, of the value of one hundred and sixty-five dollars, of the goods, chattels, moneys and property of the said Joseph Godfrey, then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 125] Witnesses: Detc. Flanagan 106, Det. Duffy 64, Off. Boyle, P. S. Police, Devon Barracks, Devon, Pa. Steve

Salata, #102 Warwick Settlement, R.D. #1, Pottstown, Pa. Joseph Godfrey, 6301 Jackson St.

Scene of Crime: 6301 Jackson St. Connor, Thos., Magistrate.

[Endorsed:] No. 254, July Sessions, 1943. Commonwealth vs. Francis Gryger, #102 Warwick Settlement, R. D. #1, Pottstown, Pa. Burglary. Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead Guilty 2nd Count. Verdict, ——. Sentence, 7/26/43. On bills 251-252.

Jul. 26, 1943 653.

[fol. 126] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia.

Bill of Indictment

July Sessions, 1943.

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Francis Gryger, late of the said county, yeoman, on the fifteenth day of May, in the year of our Lord one thousand nine hundred and forty-three at the county aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of one Juliana Mutter, unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Julianna Mutter, in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling, certain property, to wit, one Wrist Watch, of the value of ten dollars, one Ring, of the value of seven dollars, and the sum of twelve dollars, in lawful money of the United States, of the value of twelve dollars, altogether, of the value of twenty-nine dollars, of the goods, chattels, moneys and property of the said Juliana Mutter, then and there being found, feloniously and burglariously

did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 127] Witnesses: Detc. Flanagan 106, Det. Duffy 64, Off. Boyle, P. S. Police, Devon Barracks, Devon, Pa. Steve Salata, #102 Warwick Settlement, R. D. #1, Pottstown, Pa. Julianna Mutter, 6837 Kindred St. Scene of Crime: 6837 Kindred St. Connor, Thos., Magistrate.

[Endorsed:] No. 255, July Sessions, 1943. Commonwealth vs. Francis Gryger, #102 Warwick Settlement, R. D. #1, Pottstown, Pa. Burglary. Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead Guilty 2nd Count. 7/26/43. Sentence on bills 251-252.

July 26, 1943 653.

[fol. 128] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE, FOR THE COUNTY OF PHILADELPHIA

BILL OF INDICTMENT

July Sessions, 1943.

COUNTY OF PHILADELPHIA, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Francis Gryger, late of the said county, yeoman, on the twenty-third day of May, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of one Charles Maranda, unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Charles Maranda, in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling, certain property, to wit, one Radio Receiving Set, of the value of thirty-five dollars, one Class Ring, of the value of eight dollars and fifty cents, one Clock, of the value of fifteen dollars, one Necklace, of the value of fifteen dollars, two Army Insignias, together of the value of seven dollars and fifty cents, and the sum of fifteen dollars, in lawful money of the United States, of the value of fifteen dollars, altogether, of the value of ninety-six dollars, of the goods, chattels, moneys and property of the said Charles Maranda, then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania:

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried

away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 129] Witnesses: Detc. Flanagan 106, Detc. Duffy 64, Off. Boyle, P. S. Police, Devon Barracks, Devon, Pa. Steve Salata, #102 Warwick Settlement, R. D. #1, Pottstown, Pa. Charles Maranda, 3842 "K" St.

Scene of Crime: 3842 "K" St. Bail, $——. C. Connor, Thos., Magistrate.

[Endorsed:] No. 256. July Sessions, 1943. Commonwealth vs. Francis Gryger, 102 Warwick Settlement, R. D. #1, Pottstown, Pa. Burglary. Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead Guilty 2nd Count. 7/26/43. Sentence on bills 251-252.

July 26, 1943 653.

[fol. 129a] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia, July Sessions, 1943

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Francis Gryger, late of the said county, yeoman, on the twenty-fourth day of May, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of Catherine Pinchley, unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and

property of the said Catherine Pinchely, in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling, certain property, to wit, three Wrist Watches, together of the value of seventy-five dollars, one Ladies Ring, of the value of three dollars, one Lavalier, of the value of twenty-five dollars, one String of Pearls, of the value of six dollars, one Brooch, of the value of five dollars, and one three piece Suit, of the Value of twenty-two dollars, and a number of United States War Savings Stamps, of the value of seventeen dollars and seventy-five cents, altogether, of the value of one hundred and fifty-three dollars and seventy-five cents, moneys and property of the said Catherine Pinchley, then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: Contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

Witnesses: Detc. Flanagan 106; Det. Duffy 64; Off. Boyle; P. S. Police, Devon Barracks, Devon, Pa., Steve Salata, Warwick Settlement #102, R. D. #1, Pottstown, Pa.; Catherine Pinchley, 430 W. Airdrie St. Scene of Crime: 430 W. Airdrie St. Connor, Thos., Magistrate.

[Endorsed:] No. 257. July Sessions, 1943. Commonwealth vs. Francis Gryger, 102 Warwick Settlement, R. D.

#1, Pottstown, Pa. Burglary, Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead Guilty 2nd Count. —— —— Dist. Atty. sim. et issue. Verdict, — 7/26/43. Sentence on bills 251-252.

[fol. 129b] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE, FOR THE COUNTY OF PHILADELPHIA, JULY SESSIONS, 1943

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Francis Gryger, late of the said county, yeoman, on the first day of June, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of Pasquale Tanorado unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Pasquale Tanorado in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling certain property, to wit, a gold ring, of the value of twenty-four dollars, a necklace, of the value of twenty-nine dollars and a bracelet, of the value of ten dollars; altogether, of the value of sixty-three dollars, of the goods, chattels, moneys and property of the said Pasquale Tanorado then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys

and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried, away feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

Witnesses: Det. Flanagan, 106; Duffy, 64; Off. O'Boyle, P. S. Police, Devon Barracks, Devon, Pa.; Steve Salata, Warwick Settlement, #102 R. D. #1, Pottstown, Pa.; Pasquale Tanarado, 4405 Cottman St. Scene of Crime: 4405 Cottman St. Bail, $—. Costs, $—. Thos. Connor, Magistrate.

[Endorsed:], No. 258. July Sessions, 1943. Commonwealth vs. Francis Gryger, 102 Warwick Settlement, R. D. #1, Pottstown, Pa. Burglary; Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead guilty 2nd Count. — —, Dist. Atty. sim. et issue. Verdict, —. Sentence, 7/26/43. on bills 251-252.

Jul. 26, 1943 653.

[fol. 130] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia, July Sessions, 1943

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Francis Gryger, late of the said county, yeoman, on the fifteenth day of May, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of Julius Her-

bott unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Julius Herbott in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling certain property, to wit, two bracelets, together of the value of twenty dollars, of the goods, chattels, moneys and property of the said Julius Herbott then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 131] Wtinesses: Det. Flanagan, 106; Duffy, 64; Off. O'Boyle, P. S. Police, Devon Barracks, Devon, Pa.; Steve Salata, Warwick Settlement 102, R. D. #1, Pottstown, Pa., Julius Herbott, 951 Arrott St. Scene of Crime: 951 Arrott St. Bail, &—. Costs, &—. Thos. Connor, Magistrate.

[Endorsed:] No. 259. July Sessions, 1943. Commonwealth vs. Francis Gryger, 102 Warwick Settlement, R. D. #1, Pottstown, Pa. Burglary; Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead guilty 2nd Count — — Dist. Atty. sim. et issue. Verdict, —. Sentence. 7/26/43, on bills 251-252.

[fol. 132] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE, FOR THE COUNTY OF PHILADELPHIA, JULY SESSIONS, 1943

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, that Francis Gryger, late of the said county, yeoman, on the nineteenth day of May, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of Paul Posey unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Paul Posey in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling certain moneys and property, to wit, a ration book, of the value of one dollar and the sum of ten dollars, in lawful money of the United States, of the value of ten dollars; together of the value of eleven dollars, of the goods, chattels, moneys and property of the said Paul Posey then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of

the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 133] Witnesses: Det. Flanagan, 106; Duffy, 64; Off. O'Boyle, P. S. Police, Devon Barracks, Devon, Pa.; Steve Salata, Warwick Settlement 102, R. D. #1, Pottstown, Pa.; Paul Posey, 2123 E. Auburn St. Scene of Crime: 2123 E. Auburn St. Bail, $——. C. T. Connor, Magistrate.
[Endorsed:] No. 260. July Sessions, 1943. Commonwealth vs. Francis Gryger, 102 Warwick Settlement, R. D. #1, Pottstown, Pa. Burglary. Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead guilty 2nd Count. Dist. Atty. sim. et issue. Verdict, —. Sentence 7/26/43, on bills 251-252.
Jul. 26, 1943, 653.

[fol. 134] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia, July Sessions, 1943

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oath and affirmations, do present, That Francis Gryger, late of the said county, yeoman, on the fifth day of May, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of Louis Schwartz, unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Louis Schwartz in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling, certain moneys and property, to wit, eight rings, of the value of five hundred and ninety-two dollars, two wristwatches, of the value of seventy dollars; a string of pearls,

of the value thirty-eight dollars, a stick pin, of the value of eighty dollars, United States Defense Stamps, of the value of twenty-five dollars; a brooch, of the value of ten dollars; a bracelet, of the value of fifteen dollars; eight pairs of ladies' hose, of the value of twelve dollars and the sum of eight dollars, in lawful money of the United States, of the value of eight dollars; together of the value of eight hundred and fifty dollars, of the goods, chattels, moneys and property of the said Louis Schwartz, then and there being found, feloniously and burglariously did steal, take and carry away; contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 135] [Endorsed:] No. 261. July Sessions, 1943. Commonwealth vs. Francis Gryger, 102 Warwick Settlement, R. D. #1, Pottstown, Pa. Burglary; Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7-26-43. The Defendant being arraigned, plead Guilty 2nd Count. ——, Dist Atty. sim. et issue. Verdict —. 7-26-43. Sentence, on bill 251-252. Witnesses: Det. Flanagan, 106. Duffy, 64. Off. O'Boyle, P. S. Police, Devon Barracks, Devon Pa. Steve Salata, Warwick Settlement 102, R. D. #1, Pottstown, Pa. Louis Schwartz, 4048 Roosevelt Blvd. Scene of Crime: 4048 Roosevelt Blvd. Bail, $—. Costs, $—. T. Connor, Magistrate.

[fol. 136] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE, FOR THE COUNTY OF PHILADELPHIA, JULY SESSIONS, 1943

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Francis Gryger, late of the said county, yeoman, on the first day of June, in the year of our Lord one thousand nine hundred and forty-three at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and dwelling then and there situate of Matthew Tomon unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Matthew Tomon in said building and dwelling then and there being, feloniously and burglariously to steal, take and carry away; and then and there in said building and dwelling certain moneys and property, to wit, the sum of sixty dollars, in lawful money of the United States, of the value of sixty dollars, a diamond ring, of the value of ninety dollars, a gold lavalier, of the value of thirty-five dollars; one, three piece, suit, of the value of twenty-five dollars, four pair of trousers, of the value of forty dollars, one electric razor, of the value of twelve dollars and one suit case, of the value of five dollars; together of the value of two hundred and sixty-seven dollars, of the goods, chattels, moneys and property of the said Matthew Tomon then and there being found, feloniously and burglariously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said defendant above named, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods, chattels, moneys and property aforesaid, by some ill-disposed person (to the Grand Jurors aforesaid as yet unknown) then lately before feloniously and burglariously stolen, taken and carried

away feloniously, unjustly and for the sake of wicked gain did receive and have; the said defendant above named, then and there well knowing the said goods, chattels, moneys and property aforesaid to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 137] Scene-1641 E. Luzerne St.

Witnesses: Detc. Flanagan, 106; Detc. Duffy, 64; George Reidel, 6312 Jackson St.; Louis Schwartz, 4048 Roosevelt Blvd.; Joseph Godfrey, 6301 Jackson St.; Juliana Mutter, 6837 Kindred St.; Dr. Julius W. Herbott, 951 Arrott St.; Paul Posey, 2123 E. Auburn St.; Roy L. Ries, 837 Horrocks St.; Charles Maranda, 3842 "K" St.; Catherine Pinchley, 430 W. Airdrie St.; Asher Davidsoh, 6249 Mulberry St.; Pasquale Tanoreda, 4405 Cottman St.; Matthew Tomon, 1641 E. Luzerne St.; Steve Salata, Warwick Settlement #102, R. D. #1, Pottstown, Pa.; Off. O'Boyle, P. S. Police, Devon Barracks, Devon, Pa. Bail: —. Costs, & —. Connor, Thos., Magistrate.

[Endorsed:] No. 262. July Session, 1943. Commonwealth vs. Francis Gryger, 102 Warwick Settlement, R. D. #1, Pottstown, Pa. Burglary; Receiving Stolen Goods. July 21, 1943. True Bill. Sara Noll Lefever, Foreman. 7/26/43. The Defendant being arraigned, plead guilty 2nd Count. — Dist. Atty. sim. et issue. Verdict, —. Sentence 7/26/43 on bills 251-252.

Jul. 26, 1943, 653.

[fol. 138] COURT OF OYER & TERMINER & GENERAL JAIL DELIVERY, JUNE SESSIONS, 1943

No. 461

COMMONWEALTH,

vs.

EDWARD GRYGIER, alias FRANK JACKSON, alias JOSEPH McGEE, alias FRANK GRYGEIA, alias FRANCIS GUGER

Information

Philadelphia, Pa., November 27th, 1944.

Before Honorable Joseph L. Kun, J.

Present: Franklin E. Barr, Assistant District Attorney, for the Commonwealth.

Stenographer's Transcript

[fol. 139] Mr. Barr: In this matter, charging the defendant with being a fourth offender, the information was filed on the 4th of May of this year, and the defendant was served on the 9th day of May; both papers are before your Honor.

I ask that the information be read to him, so that he may answer whether or not he is the man named in there, which is required by the Act. You will have to read the whole information to him, Mr. Beaston.

The Crier: "1. Be it remembered by this Information that I, John H. Maurer, District Attorney of the County of Philadelphia, State of Pennsylvania, in pursuance of an Act of Assembly of the said Commonwealth, entitled 'The Penal Code of 1939, June 24th, P. L. 872', which by section 1108 provides for punishment for second and subsequent convictions, do accuse Edward Grygier, alias Frank Jackson, alias Joseph McGee, alias Francis Geyger, alias Francis Grygeia, alias Francis Guger, above named, who under and by the name of Francis Guger, within two years last past, to wit, on February 25, 1944, before the Honorable Harry S. McDevitt, a Judge of the Court of Oyer and Terminer and General Jail Delivery of the County of Philadel-

[fol. 140] phia, was duly convicted of the crime of burglary perpetrated upon the dwelling of one Raymond Wilde on or about June 20, 1943, charged against him in a certain indictment theretofore duly presented and found true at a Grand Inquest of the said Commonwealth, inquiring for said County of Philadelphia as of June Sessions, 1943, No. 461, as in said indictment particularly set forth, upon which verdict and judgment was duly entered on the 25th day of February, A. D. 1944 that the said defendant undergo an imprisonment in the Eastern State Penitentiary for a term of not less than five nor more than ten years after the expiration of a sentence he was then serving, pursuant to which judgment he is now there incarcerated of having been previously convicted and sentenced of certain other crimes three or more times, to wit, the crimes of robbery and burglary, that is to say:

2. That the said defendant under the name of Edward Grygier, on March 17th, 1927, was convicted in the Circuit Court of Harford County, Maryland, of burglary, and sentenced to serve one year at the Maryland House of Correction from March 17th, 1927 until January 17th, 1928, his discharge therefrom being [fol. 141] absolute.

3. That the said defendant at Philadelphia County, under the name of Edward Grygier, charged with burglary of the dwelling of Walter Allen in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of April Sessions, 1929, No. 1107, on which he was convicted of said crime as therein set forth on April 23, 1929, upon which verdict, judgment was duly entered the same day by the Honorable Horace Stern, a Judge of said Court, that the defendant undergo imprisonment in Huntingdon Reformatory, in pursuance to which the defendant was confined until September 20, 1930.

4. That the said defendant at Philadelphia County, under the name of Frank Jackson, alias Grygier, in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of November Sessions, 1930, No. 1679, was charged with robbery,

being armed with an offensive weapon with intent to rob one Paul Grotzinger, and was duly convicted (plead guilty) of said crime as therein set forth on November 28, 1930, upon which verdict (plea) judgment was duly entered the same day by the Honorable Otto R. Heilig-[fol. 142] man, a Judge of said Court, that the defendant undergo an imprisonment in the Eastern State Penitentiary of not less than five years nor more than ten years in pursuance of which the defendant was there confined until May 28, 1936 when he was discharged on parole.

5. That the said defendant at Philadelphia County under the name of Edward Grygier, alias Frank Jackson, alias Joseph McGee, in an indictment duly presented and found true by the Grand Jury of Philadelphia County as of April Sessions, 1937, No. 1046, charging said defendant with burglary, entering in the night without breaking with intent to commit a felony, and receiving stolen goods of one Edward O'Neill, on April 28, 1937, was duly convicted (plead guilty) of receiving stolen goods, and upon which verdict (plea) judgment was duly entered on the same day by the Honorable Raymond MacNeille, a judge of said court, that the defendant undergo an imprisonment of not less than eighteen months nor more than three years in the Eastern State Penitentiary at the expiration of [fol. 143] the unexpired parole sentence imposed on November 28th, 1930 on Bill No. 1679 of November Sessions, 1930, and that he was confined there until April 29, 1943, when he was paroled.

Dated, Philadelphia, Pennsylvania, the first day of May, A. D. 1944.

John H. Maurer, District Attorney of Philadelphia County."

"COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia:

John H. Maurer, being duly sworn according to law, deposes and says that he is the District Attorney of Philadelphia County and that the facts set forth in the foregoing Information are true and correct to the best of his knowledge, information and belief.

John H. Maurer."

Mr. Barr: Your Honor, he is required to answer whether or not he is the same person as charged.

By the Court (addressing defendant):

Q. Are you the person referred to in the information of the District Attorney, just read to you in these names, or any of them, Edward Grygier, alias Frank Jackson, alias Joseph McGee, alias Francis Geyger, alias Francis Grygeia, alias Francis Guger?

A. I am—my name is only Frank Grygier, and Frank Jackson, and Joe McGee; as far as the other names are [fol. 144] concerned, they are all the same names, the——

Q. A difference in spelling, you mean?

A. That's right, your Honor, just a difference in spelling.

Q. I have already asked you whether you are the person named?

A. Yes, sir, I am.

Q. You have answered now that you are?

A. Yes, sir.

Q. And are you the same person referred to in the various offenses that were read to you by the Crier, as having been committed by you, under one or another of these names?

A. Yes, your Honor.

Mr. Barr: Then, your Honor, I move for sentence, but before that, I will offer in evidence the indictments with the sentences on them.

The Act of Assembly requires that the defendant shall be guilty of certain offenses named in the Act, of which the offenses charged are those offenses, and requires that the offenses shall be committed within five years of the former conviction, or within five years after he gets out of jail; so that is the thing that has to be covered in our sentences.

[fol. 145] Your Honor, I offer in evidence an exemplified copy of the record of the Harford County Court, of the State of Maryland, showing the finding of an indictment on February 16th, 1927, and the plea of guilty by the defendant on March 17th, and the sentence on the same day, March 17th, 1927 to the Maryland House of Correction for one year.

(Marked Commonwealth's Exhibit No. 1, copied as indexed.)

I offer in evidence a letter received from the Maryland House of Correction in re: Grygier, stating that on this sentence imposed on March 17th, 1927, he was confined to the Maryland House of Correction until January 17th, 1928, when he was discharged absolutely and not on parole; so that the next sentence—there must be a conviction within five years from January 17th, 1928.

(Marked Commonwealth's Exhibit 2, copied as indexed.)

I offer in evidence indictment of Philadelphia County charging the defendant, under the name of Edward Grygier, as of April Sessions, 1929, No. 1107, charged with burglary, entering in the night without breaking and intent to commit a felony and receiving stolen goods, in which he was convicted on April 23rd, 1929; on the same day sentenced by [fol. 146] Judge Stern to Huntingdon Reformatory.

(Marked Commonwealth's Exhibit No. 3, copied as indexed.)

I offer in evidence, in view of that sentence by Judge Stern, a photostatic copy of the commitment, together with photostatic copy of the parole agreement covering Edward Grygier, on which he was paroled as of September 20th, 1930.

(Commitment marked Commonwealth's Exhibit 4; parole agreement marked Commonwealth's Exhibit No. 5, copied as indexed.)

I offer in evidence bill of indictment of Philadelphia County, November Sessions, 1930, No. 1670, charging Frank Jackson, alias Grygier, with the first count, robbery, being armed with an offensive weapon and the second count, assault, being armed with an offensive weapon, with an intent to rob, together with bill of indictment, of November Sessions, 1930, No. 1680, charging him with entering, with intent to rob, to both of which bills he pleaded guilty and was sentenced on Bill 1679, to 5 to 10 years in the Eastern State Penitentiary by his Honor Judge Heiligman.

(Both bills marked Commonwealth's Exhibit 6, copied as indexed.)

Is the man from the penitentiary with the record of discharge here?

[fol. 147] THOMAS S. COLLINS, sworn:

By Mr. Barr:

Q. Have you the date of discharge?

A. I haven't any record, but I can give you the date of discharge.

Q. What is your name?

A. Thomas S. Collins.

Q. You are connected with the Eastern Penitentiary?

A. I am.

Q. In reference to this sentence which has just been put in evidence, in 1930,——

A. Yes, sir.

Q. When was he paroled?

A. He was paroled on the 28th day of May, 1936.

Mr. Barr: I offer in evidence, your Honor, the indictment found in the Philadelphia County as of April Sessions, 1937, No. 1046, charging Edward Grygier, alias Frank Jackson, alias Joseph McGee, charging him with burglary, entering in the night, without breaking, with intent to commit a felony; receiving stolen goods, to which the defendant, on April 28th, 1937, pleaded guilty to the third count, namely, receiving stolen goods, and was sentenced on the same date to 18 months to 3 years in the Eastern Penitentiary, at the expiration of his unexpired parole sentence on the former bill.

[fol. 148] He was also indicted at the same time on bill 1047, for carrying concealed deadly weapons and unlawfully carrying firearms without a license, at the time of the other, and I offer those in evidence.

(Marked Commonwealth's Exhibits 7 and 8 respectively, copied as indexed.)

By Mr. Barr:

Q. And will you tell us when he was paroled?

A. That is on Bill 1046 of April, 1937?

Q. Correct.

A. On that bill, while he was committed on the 28th of April, 1937, and returned to the Eastern Penitentiary on that date, he had an unexpired parole of 5 years to do on the previous bill of 1930; when he was returned on April 28th, 1937, instead of beginning the bill that he was sen-

tenced to on that date, he was entered or registered to serve the unexpired parole, and after the expiration of that to begin the subsequent bill of 18 months to 3 years. Now, on the previous bill, of 1930, the final discharge on that bill was on October 28th, 1941, and upon the same date he was re-entered to begin the sentence of 18 months to 3 years which was imposed by Judge MacNeille on April 28th 1937.

Q. And when was he discharged on that one?

A. On the 18 months to 3 years?

Q. Yes.

A. That is the term, I believe, he is serving now.

[fol. 149] Q. No, he has been out since then.

A. That doesn't expire, the unexpired minimum term——

Q. He ought to have been discharged on that on April 29th, 1943; wasn't he discharged then?

A. Yes, I beg pardon; he was parolled on April 29th, 1943; that's right, I beg pardon.

Mr. Barr: Your Honor, the purpose of putting in that last bill, which is not one of the offenses for which he could be charged as a fourth offender, is to show that five-year period was not exhausted, because he was in prison; I want to put that on the record so there won't be any question about that.

The Court: I understand.

Mr. Barr: The defendant was indicted as of July Sess., 1943, Philadelphia County, under the name of Francis Grygeia, on a number of bills of indictment, being bills 251 to 259, inclusive, all of which charge him with burglary and receiving stolen goods, and he pleaded guilty on those bills, to receiving stolen goods, and was sentenced on July 26th, 1943, to 2 and ½ to 5 years, on bill No. 251, at the expiration of his sentence on Bill 1046, which he was serving; and on bill 252, to two and a half to five years, at the expiration of his sentence on Bill 251, of July Sessions, by Judge Mc-[fol. 150] Devitt. This, I think he is now serving, but they are part of the receiving stolen goods bills and not committed as a felony.

He was indicted as of June Sessions, 1943, Bills 461 and 462. 461 charges burglary; 462 charges assault and battery and aggravated assault and battery on one Hoss, and the burglary is a burglary of Raymond Wills, on which burglary bill he was sentenced after a verdict of guilty, on February 25, 1944, 5 to 10 years in the Eastern State Penitentiary,

after the expiration of his present sentence; that will still pending.

Those are the four felonies that are charged against him.

The Court: That gave rise to the filing of the Information now before the Court?

Mr. Barr: Yes, sir, and he is still serving the sentence in the Penitentiary?

The Witness: Yes, sir.

Q. There are some former sentences before the last; he has not started to serve the last sentence?

A. No, he has, I believe, two sentences to serve before that.

By the Court:

Q. Before this last sentence imposed can begin, as I understand?

[fol. 151] A. Yes, sir.

By the Court (addressing defendant):

Q. What is your real name? What was your name before you adoped these various aliases?

A. Frank Grygier, the same name they have there, but I don't know how they got—I mean Frank.

By Mr. Barr:

Q. G-r-y-g-i-e-r, is that correct?

A. Correct, sir.

Mr. Barr: There's the name Frank and Edward, also known as——

The Court: Edward Grygier, and Joseph McGee, another name he had. I would like to know what your name was before you started your trouble.

The Defendant: Frank Grygier—I have a birth certificate.

Q. It is just a case of identity. You have declared in open court you are the person known by various aliases mentioned, some being merely the changes in spelling of the one name?

A. That's right.

Q. It has also been proven to the satisfaction of the Court, you are the person who has committed these four

felonies—more than four, for that matter—in the prescribed [fol. 152] period of the Statute referred to in the Information?

A. Your Honor——

Q. Have you anything to say before sentence is imposed?

A. On the sentences, not one of them that has been read has been a burglary charge whatsoever, not one sentence on that record at all, every sentence that he has read off burglary, is receiving stolen goods; if you get my evidence in my case, they had no witnesses, no prosecutor, nobody whatsoever; they didn't find the goods on me; they found them on someone else; I said I gave the goods to them; they had no witness, no prosecutor, nothing; I pleaded guilty for receiving stolen goods, having them in my possession. How do they put burglary on there, when it shouldn't be burglary, but they done it, how, I don't know; them 12 burglaries were, out of 12 burglaries that Judge McDevitt sentenced me for, there was no evidence, no prosecution whatsoever in court, and there's only four people out of the whole 12 burglaries really identified maybe one piece of antique jewelry that was taken from their place, antique jewelry, which couldn't be identified at all, being 5 and 10 cent store stuff. Where are them other 12 burglaries? They got 12 indictments; who are the people? Who are they? There is nobody in court; they can't bring any wit- [fol. 153] ness; nobody ever saw me do these things they put on me, because they picked me up and they went to the station house with reference to me, because they picked me up maybe in connection with receiving stolen goods by me, with the records they had, they put that on me, but there was no witness, no prosecutor, nothing whatever to show that was so. So that is why they had me plead not guilty on that burglary; they were tickled to death to try me on stolen goods; they had something that would stick; they knew if I was brought to trial for burglary I would beat them, because they had no case whatsoever against me. You can look at the case, your Honor; it's only 8 months, and if you can show me one prosecutor out of the 12 burglaries, I am willing to go back and serve the rest of my life in the place which I am in.

Q. Are you finished?

A. That's all I can say.

Mr. Barr: It is perfectly true those are the ones he said he pleaded guilty to.

The Court: You see it isn't within the scope of this court to re-try all your cases; the only thing we have to try is this proceeding to determine whether you are one and the same person mentioned in the indictment referred to in the Information.

[fol. 154] As to the disposition of the cases, they are matters of record, and on the basis of the record in each of these cases, and on the basis of your acknowledgment of identity, it becomes my duty, under the Act of Assembly, to treat such a case, that is to say, where a person has been found guilty the fourth time of a felony within a prescribed period, to impose the sentence required by the Act.

The Defendant: Your Honor, I beg pardon, but I have served my time for those sentences. Now, Judge McDevitt had all the power in the world to give me life in 1943, when I was brought in front of him. Now, Judge McDevitt did not give me life. He sentenced me to 5 to 10 years in the Eastern Penitentiary, after the expiration of my sentence, which I have now served, and a month later he brought me back into this courtroom again and gave me another 5 to 10 on top of that, to serve after the expiration of my parole, and 5 to 10 was given me. Now, I cannot see why I should be sentenced again for the same thing, which I have been, and I haven't done anything; I'm being tried twice for the same offense; I served my time; I have served every day, for what I have really done. Now, this way, I'm being tried over for nothing at all.

[fol. 155] The Court: No, I'll explain that to you; you're not being tried over again for offenses for which you have already been tried; neither are you being sentenced over again for the offense or any other offense. The law is that a person who has been found guilty of felony four times within the periods prescribed must be punished, because of those successive convictions. You understand this is an entirely new and different cause for punishment. You are not being tried over again.

The Defendant: I realize that.

The Court: You are not going to be sentenced over again for the offense for which you have already been tried and sentenced. This is called The Fourth Offender Act.

The Defendant: I realize that.

The Court: In other words, the law has come to this viewpoint: after a person has committed a felony and gets punished and released, then he goes back and commits similar offenses of equal gravity again, again and again, four times, each within five years of the previous one, he is so much of an enemy of society that he must be removed from the possibility of ever committing the offense again. Now, that is the law, Grygier, isn't it?

The Defendant: Yes.

[fol. 156] The Court: The Court doesn't make the law. The Court simply applies the law. That is made by the people, people make their laws through the Legislature. The Legislature of this State passed this law, and the duty of the Courts is to apply the law in the proper cases. We do not make the law. We apply the law that the Legislature, speaking for the people has found it necessary to establish as the law of the State.

The Defendant: Well, I realize that, your Honor, that the law—that there is a law like that, but I should have been sentenced the day I committed that crime, but I was also sentenced two times, three times after that. I don't think they have any authority to take me out of jail after I done that time. If Judge McDevitt sentenced me in 1943, when I was brought in front of him, he was in the right to do that; he had all the power, but I don't see no power for the law to go out and take a man out of jail after he is doing time. That doesn't show in the Statute, in the Constitution, in the laws in Harrisburg. I realize there is a law called The Fourth Offender, if I went out on the street, if I ever got arrested, they could give me life, but if the Judge did not give me life; if he gave me five to ten and then took me out and put another [fol. 157] on top of that, why he could take me out and give me life on top of that again. Therefore, I am getting sentenced three times for the same thing. Why didn't they give me life then and I would have been satisfied. Now, the time I have already served in the Penitentiary, if I get life from you, it doesn't mean a thing to me; I have to start all over again, 15 years, 20 years, before I could get a pardon, in this way I have good behavior time, but there won't be any good behavior, that would mean if I would go back now I would have a new number; my time starts today, not last year or five years, but now. It starts the day you sentence me. Who pays for

it? Whose getting that time? I'm getting a raw deal, coming up for pardon.

Mr. Barr: He doesn't understand.

The Court: I tried to make it clear.

Mr. Barr: As a matter of fact this fourth offense, under the Act, he was found guilty of on February 25th, of this year, so that we couldn't have an information required, by the Act, as a fourth offender, until after February 25th of this year.

The Court: And after sentence thereon.

Mr. Barr: Yes, and when that was imposed and brought to the attention of the District Attorney, and the Information was filed, he was given a copy of it, and be-
[fol. 158] cause of getting certain records and information and witnesses, it delayed the thing until this time.

The Court: I have to do my duty under the law. I want to correct you on one thing; you said something about you may be prevented or deprived of the opportunity of seeking a pardon or even a commutation of sentence. You are wrong about that. You may apply for a pardon tomorrow or commutation of your sentence at any time whatever. This doesn't foreclose that right on your part. I want to correct you on that. You still have the right to apply for clemency to the Board of Pardons any time that you see fit and they have a perfect right to do whatever they see fit about the matter, and we have no control over that. I want to straighten that out in your mind.

The Defendant: I realize that, your Honor.

The Court: I don't see any point in further discussion because the case seems very clear and it becomes my duty and I now pronounce sentence: that you undergo life imprisonment in the Eastern State Penitentiary, and the sentence of February 25th, 1944 is vacated in accordance with the provisions of the Act of Assembly when sentence is life imprisonment.

[fol. 159] COMMONWEALTH'S EXHIBIT No. 1

STATE,

vs.

EDWARD J. GRYGIER

February 16, 1927—Presentment for Burglary filed and Capias issued—"Cepi" Same day indictment endorsed "True Bill" filed.

February 21, 1927—A. F. Brown for Deft.

March 17, 1927—Arraigned—Rule Plea—Plea Guilty confessed.

March 17, 1927—Judgment and sentence that prisoner be confined in the Maryland House of Correction for a period of one (1) year.

March 17, 1927—Commitment made out.

Plaintiff's Costs, $ —

Defendant's Costs, $ —

[fol. 160] STATE OF MARYLAND, HARFORD COUNTY, SCT.

I Hereby Certify, that the aforegoing is a true copy of the Docket entries in the above entitled cause, taken from the Record of Proceedings of the Circuit Court for Harford County.

In Testimony Whereof, I hereto set my hand and affix the seal of the said Court, this 24th day of June A. D., 1944. (Signed) Granville C. Boyle, Clerk of the Circuit Court for Harford County. (Seal.)

DOCKET —. FOLIO —

vs.

COPY OF DOCKET ENTRIES

I, Frederick Lee Cobourn, Associate and the presiding Judge of the Circuit Court for Harford County, do certify that the foregoing Certificate and Attestation made by Granville C. Boyle, Clerk of the Circuit Court for Harford [fol. 161] County, whose name is thereto subscribed and seal of said Court affixed, are in due form and made by the proper officer.

In testimony whereof I hereto subscribe my name this 24th day of June in the year 1944. (Signed) Frederick Lee Cobourn.

STATE OF MARYLAND, HARFORD COUNTY, TO WIT:

I, Granville C. Boyle, Clerk of the Circuit Court for Harford County, do certify that the Honorable Frederick Lee Cobourn, by whom foregoing Attestation was made, and who has thereunto subscribed his name was at the time of making thereof, and still is, Associate Judge of the Circuit Court for Harford County, and now presiding therein, duly commissioned and sworn; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Jurisdiction as elsewhere.

In testimony whereof I hereto subscribe my name [fol. 162] and affix the seal of the Circuit Court for Harford County, this 24th day of June, 1944. (Signed) Granville C. Boyle, Clerk of the Circuit Court for Harford County. (Seal.)

COMMONWEALTH'S EXHIBIT No. 2

J. LeRoy Wright, M. D., Warden

(Coat of Arms)

MARYLAND HOUSE OF CORRECTION, JESSUPS, MARYLAND

March 27, 1944.

Re—Edward Grygier. MHC#12860

Mr. Franklin E. Barr, Assistant District Attorney, Philadelphia 7, Pa., Room 666 City Hall.

DEAR MR. BARR:

[fol. 163] I am sorry but your letter of February 29th was not turned over to me for reply and after some checking, we have finally found your man as Edward Grygier. Our old records are not very complete, but I think this is the information you desire—

Received at the Maryland House of Correction March 17, 1927 to serve one year for Burglary and was sent here by the Circuit Court of Harford County. He was released, at the expiration of his sentence on January 17, 1928, the discharge being absolute and not a parole.

Very truly yours, The Warden, By (Signed) (Mrs.) Ailsa N. Waltemyer, Record Librarian.

COMMONWEALTH'S EXHIBIT No. 3

No. 1107

APRIL SESSIONS, 1929

COMMONWEALTH

vs.

[fol. 164] EDWARD GRYGIER, 757 E. Ontario St.

Burglary.

Entering in the night without breaking, with intent to commit a felony.

Receiving stolen goods.

True bill.

(Signed) James C. Lyons, Foreman,

Apr. 22, 1939.
4/23/27. 192—

The Defendant being arraigned, plead Eo Die Not Guilty. Dist. Atty. sim. et. issue verdict Guilty and Sentenced Huntingdon Reformatory

By the Court.

(Signed) Horace Stern, J.

IN THE COURT OF OYER AND TERMINER OF THE COUNTY OF PHILADELPHIA, APRIL SESSIONS, 1929

COUNTY OF PHILADELPHIA, SS:

[fol. 165] The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Grygier late of the said County, minor, on the eighteenth day of April in the year of our Lord one thousand nine hundred and twenty-nine about the hour of eleven in the night of the same day, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., the building and dwelling house then and there situate of Walter Allen unlawfully, wilfully, maliciously, feloniously and burglariously did break and enter, with in-

tent the goods and chattels, moneys and property of him the said Walter Allen in the said building and dwelling house then and there being, feloniously and burglariously to steal, take and carry away; and then and there in the said building and dwelling house, certain property, to wit, two strings of beads, together of the value of twenty-five dollars; four suits of men's clothes, together of the value [fol. 166] of four hundred dollars; two coats, together of the value of seventy-five dollars; and four dresses, together of the value of four hundred dollars; altogether of the value of nine hundred dollars of the goods and chattels, moneys and property of him the said Walter Allen in the said building and dwelling house then and there being found, feloniously and burglariously did steal, take and carry away, contrary to the form of the act of the general assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said Edward Grygier on the day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., did about the hour of eleven in the night of the same day, unlawfully, wilfully, maliciously and feloniously enter the building and dwelling house of him the [fol. 167] said Walter Allen then and there situate, without breaking the same, with intent then and there certain property, to wit, two strings of beads, together of the value of twenty-five dollars; four suits of men's clothes, together of the value of four hundred dollars; two coats, together of the value of seventy-five dollars; and four dresses, together of the value of four hundred dollars; all together of the value of nine hundred dollars; the goods, and chattels, moneys and property of him the said Walter Allen to feloniously steal, take and carry away contrary to the form of the act of the general assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid do further present, That the said [fol. 168] Edward Grygier afterwards, to wit: On the same day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., the goods and chattels, moneys and property aforesaid by some ill-disposed person (to the Jurors aforesaid yet un-

known) then lately before feloniously and burglariously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain did receive and have (the said Edward Grygier then and there well knowing the goods and chattels, moneys and property last mentioned to have been feloniously and burglariously stolen, taken and carried away), contrary to the form of the act of the general assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

(Signed) John Monaghan, District Attorney.

——— ——, 192—. Recognizance of Defendant and surety forfeited.

Apr. 23, 1929 453.

[fol. 169] Witnesses: Walter E. Allen, 1815 Butler St.; Det Bradford, McDowell, Central, Milton Rose, 2954 Kensington Ave.

Bail, $—.

Costs, $ —.

Oswald, Magistrate.

COMMONWEALTH'S EXHIBIT NO. 4

HON. HORACE STERN

COURT OF OYER AND TERMINER, GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE, FOR THE CITY AND COUNTY OF PHILADELPHIA

THE COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GRYGIER

[fol. 170]. 16883.

BILL OF INDICTMENT

APRIL SESSIONS, 1929

No, 1107 Sur Charge of Burglary on Apr. 23, '29. Defendant Pleaded guilty. Convicted.

I Certify, that on the 23rd day of April A. D. 1929 the above-named defendant is adjudged by the Court to be

taken to the Pennsylvania Industrial Reformatory at Huntingdon, Pa., to be there confined in accordance with law made and provided, and to be there fed, clothed and in all respects treated as the law directs.

In Witness Whereof, I have hereunto set my hand and the Seal of said Court, this 23rd day of April A. D. 1929.

(Signed) John F. Flaherty, Pro Clerk.

COMMONWEALTH'S EXHIBIT No. 5

8-28-28-IM. Pennsylvania Industrial Reformatory

Huntingdon, Pa.

[fol. 171] Jas. W. Herron, General Superintendent

Parole Agreement

I, Edward Grygier, an inmate of the Pennsylvania Industrial Reformatory, hereby declare that I have carefully read, and do clearly understand the contents and conditions of the standard parole agreement which I have signed, and I hereby accept the same and do pledge myself to honestly comply with all the conditions named therein, as prescribed by the Board of Trustees at their meeting held Sep. 10, 1930 when my application for release of parole was favorably considered by them.

Dated at Huntingdon, Pa., this day of Sep. 20, 1930. 192.

Signed Edward J. Grygier, No. 16883.

Witness: J. B. Boring.

Date Sep. 19, 1930.

COMMONWEALTH'S EXHIBIT No. 6

No. 1679. E. November Sessions, 1930

COMMONWEALTH

vs.

[fol. 172] FRANK JACKSON alias Grygier

2248 Simon St. or 2027 Hart Lane

1st Count, Robbery.—Being armed with an offensive weapon.

2nd County, Assault.—Being armed with an offensive weapon with an intent to rob.

[3rd County, Robbery.—Together with other persons.

4th County, Assault.—Together with other persons with an intent to rob.

5th Count, Robbery.—And at commission thereof, beating, striking, and ill using.]*

True Bill. M. Longhead, Foreman. Nov. 26, 1930. 11/28/30. The Defendant being arraigned, pleads Eo. Die Guilty. Sent. to not less than 5 years nor more than 10 years. E. F. By the Court, J. Nov. 28, 1930, 453.

[fol. 173] Witnesses: Paul Grotzinger, 1000 E. Tioga St. Off. Shay 1573, 30th Dist. Bail, $——. C. Costs, $——. Lindell, Magistrate.

In the Court of Oyer and Terminer and General Jail Delivery of the County of Philadelphia, November Sessions, 1930

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, that Frank Jackson alias Grygier, late of the said County, yeoman, on the twenty-second day of November in the year of our Lord one thousand nine hundred and thirty at the County aforesaid, and within the jurisdiction of this Court, with force [fol. 174] and arms, etc., being armed with an offensive weapon and with an offensive instrument, in and upon one Paul Grotzinger feloniously did make an assault, and the said Paul Grotzinger in bodily fear and danger of his life, then and there feloniously did put, and from the person of one Paul Grotzinger, the sum of twenty-six dollars and fifty cents, in lawful money of the United States, of the value of twenty-six dollars and fifty cents, of the goods and chattels, moneys and property of the said Paul Grotzinger, then and there feloniously and violently did rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

---

* Struck out in copy.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said Frank Jackson alias Grygier, on the twenty-second day of November, in the year of our Lord one thousand nine hun- [fol. 175] dred and thirty, at the County aforesaid, and within the jurisdiction of the Court aforesaid, with force and arms, etc., being armed with an offensive weapon and with an offensive instrument, in and upon the said Paul Grotzinger feloniously did make an assault, with an intent, from the person of the said Paul Grotzinger, the sum of twenty-six dollars and fifty cents, in lawful money of the United States of the value of twenty-six dollars and fifty cents, of the goods and chattels, moneys and property of the said Paul Grotzinger then and there feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly, in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said —— —— on the —— day of —— in the year of our Lord one thousand nine hundred and —— at the County aforesaid, and within the jurisdiction of the Court aforesaid, with force and arms, etc., together with divers other persons, [fol. 176] whose names are to the said Grand Inquest as yet unknown, in and upon the said —— —— feloniously did make an assault, and the said —— —— in bodily fear and danger of — life, then and there feloniously did put, and —— —— of the value of —— of the goods and chattels, moneys and property of the said —— ——, then and there feloniously and violently did rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said —— —— on the —— day of —— in the year of our Lord one thousand nine hundred and —— at the County afore- [fol. 177] said, and within the jurisdiction of the Court aforesaid, with force and arms, etc., together with divers other persons whose names are to the said Grand Inquest as yet unknown, in and upon the said —— —— feloniously did make an assault, with an intent, —— —— of the value of —— and other of the goods and chattels, moneys and

property of the said —— —— then and there feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said —— on the —— day of —— in the year of our Lord one thousand nine hundred and —— at the County aforesaid, and within the jurisdiction of the Court aforesaid, with force and arms, etc., in and upon the said —— did make an assault and the said —— in bodily fear and danger of life, did [fol. 178] put, and of the value of —— of the goods and chattels, moneys and property of the said —— then and there feloniously and violently did rob, seize, steal, take and carry away, and that the said —— immediately before, and at the same time with and immediately after, the commission of the aforesaid felony and robbery, the said —— feloniously did beat, strike, ill use, and do other violence to: contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

(Signed) John Monaghan, District Attorney.

COMMONWEALTH'S EXHIBIT NO. 6-A, NOVEMBER SESSIONS, 1930

No. 1680

COMMONWEALTH,

vs.

[fol. 179] FRANK JACKSON alias GRYCIER

1st Count—Entering with Intent to Rob. Nov. 26, 1930. True Bill. M. Longhead, Foreman. 11/28/30. The Defendant being arraigned, plead Guilty. —— Dist. Atty. sim. et issue. Verdict, —. Sentence, on 1679.

Nov. 28, 1930. 453.

19—. Recognizance of Defendant and sure forfeited.

IN THE COURT OF QUARTER SESSIONS OF THE PEACE, OF THE COUNTY OF PHILADELPHIA, NOVEMBER SESSIONS, 1930

[fol. 180] COUNTY OF PHILADELPHIA, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Frank Jackson alias Grygier, late of the said County, yeoman, on the twenty-second day of November in the year of our Lord one thousand nine hundred and thirty, at the County aforesaid, and within the jurisdiction of this Court, feloniously, wilfully and maliciously did enter the building and store there situate of Paul Grotzinger with an intent, the goods and chattels, moneys and property in the said building and store, from the person of Paul Grotzinger then and there being found, violently and feloniously to rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said —— afterwards, to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, altogether of the value of the goods and chattels, moneys and property of —— then and there being found, then and there feloniously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 181]

And the Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said —— afterwards, to wit: On the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods and chattels, moneys and properties aforesaid, by some ill-disposed person (to the Jurors aforesaid yet unknown) then lately before feloniously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have, the said —— then and there well knowing the goods and chattels, moneys and properties last mentioned, to have been feloniously stolen, taken and carried away: contrary to the form of the

[fol. 182]

Act of General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

—— ——, District Attorney.

Witnesses: Paul Grotzinger, 1000 E. Tioga St., Off. Shay, 1573. 30th Dist. Bail, & —. Cost, & —. Lindell, Magistrate.

Commonwealth's Exhibit No. 7. No. 1046. E. [1076]* [fol. 183] [1076]* April Sessions, 1937. Commonwealth vs. Edward Grygier alias Frank Jackson alias Joseph McGee, 477 Green St., Brooklyn, N. Y. Burglary. Entering in the Night, without Breaking, with intent to commit a Felony. Receiving Stolen Goods. April 26, 1937. True Bill. (Signed) Edw. G. Soch, Jr., Foreman. 4/28/37. The Defendant being arraigned, plead Guilty 3rd commit. Dist. Atty. sim. et issue. Verdict. Eo Die. Sentence, 18 mos. to 3 years E. P. at expiration of unexpired Parole. Sentence imposed 11/28/30 on bill 1679 of November 1930. (Signed) by the [fol. 184] Court, J. Apr. 28, 1937, 453. 19. Recognizance of Defendant and suret forfeited. Witnesses: Off. Davis 2868, Peterson 4246, 24th Dist. Det. McCourt 94, Lennon 170, Burke 142, 3rd Det. Div. Sarah O'Neill, Edward O'Neill, 7406 Briar Rd. Bail, $——. C. Cost, $——. Holland, Magistrate.

In the Court of Oyer and Terminer of the County of [fol. 185] Philadelphia, April Sessions, 1937

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Grygier alias Frank Jackson alias Joseph McGee late of the said County, yeoman, on the sixteenth day of April in the year of our Lord one thousand nine hundred and thirty-seven about the hour of eleven in the night of the same day, at the county aforesaid, and within the jurisdic-

---

* Struck out in copy.

tion of this court, with force and arms, etc., the building and dwelling house then and there situate of Edward O'Neill unlawfully, wilfully, maliciously, feloniously and burglariously did break and enter, with intent the goods and chattels, moneys and property of him the said Edward O'Neill in the said building and dwelling house then and there being, feloniously and burglariously to steal, take and carry away; and then and there in the said building and dwelling house, certain property, to wit, one silver table set, of the value of one hundred and twenty-five dollars; [fol. 186] and four men's rings, one lady's watch, one lady's ring, six fraternal charms, one revolver, one vacuum cleaner and one man's hat, together of the value of one hundred and twenty-five dollars; altogether of the value of two hundred and fifty dollars, of the goods and chattels, moneys and property of him the said Edward O'Neill in the said building and dwelling house then and there being found, feloniously and burglariously did steal, take and carry away, contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Grigier alias Frank Jackson alias Joseph McGee, on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., did about the hour of eleven in the night of the [fol. 187] same day, unlawfully, wilfully, maliciously and feloniously enter the building and dwelling house of him the said Edward O'Neill then and there situate, without breaking the same, with intent then and there the goods and chattels, moneys and property of him the said Edward O'Neill to feloniously steal, take and carry away contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Grygier alias Frank Jackson alias Joseph McGee [fol. 188] afterwards, to wit: On the same day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., the goods and chattels, moneys and property aforesaid by some ill-disposed person (to the Jurors aforesaid yet unknown) then

lately before feloniously and burglariously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain did receive and have (the said Edward Grygier alias Frank Jackson alias Joseph McGee then and there well knowing the goods and chattels, moneys and property last mentioned to have been feloniously and burglariously stolen, taken and carried away), contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

(Signed) Charles F. Kelley, District Attorney.

[fol. 189] Commonwealth's Exhibit No. 8. No. 1047. E. April Sessions, 1937. Commonwealth vs. Edward Grygier alias Frank Jackson alias Joseph McGee, 477 Green St., Brooklyn, N. Y. Carrying concealed deadly weapon. Unlawfully carrying firearm without a license. April 26, 1937. True Bill. Edward G. Soch, Jr., Foreman. 4/28/37. The Defendant being arraigned, plead Guilty. Dist. Atty. sim. et issue. Verdict. Eo Die. Sentence on 1046. Witnesses: [fol. 190] Off. Davis 2868, Peterson 4246, 24th Dist. Det. McCourt 94, Lennon 170, Burke 142, 3rd Det. Div. Sarah O'Neill, Edw. O'Neill, 7406 Briar Rd. Bail, $——. C. Costs, $——. Holland, Magistrate. Apr. 28, 1937, 453.

In the Court of Quarter Sessions of the Peace, of the County of Philadelphia, April Sessions, 1937

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their [fol. 191] respective oaths and affirmations, do present, That Edward Grygier alias Frank Jackson alias Joseph McGee late of the said County, yeoman, on the sixteenth day of April in the year of our Lord one thousand nine hundred and thirty seven, at the County aforesaid, and within the jurisdiction of this Court, did unlawfully carry concealed upon his person a certain deadly weapon, commonly called a revolver, said revolver being then and there loaded with powder and bullet with the intent therewith unlawfully and maliciously to do injury to some other person to

the Grand Inquest aforesaid as yet unknown: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said Edward Grygier alias Frank Jackson alias Joseph McGee on the said sixteenth day of April, in the year of our Lord [fol. 192] one thousand nine hundred and thirty-seven, at the county aforesaid, and within the jurisdiction of this Court, did unlawfully carry, in a place not his abode nor his fixed place of business, to wit, on or about the person of him the said Edward Grygier alias Frank Jackson alias Joseph McGee a firearm, to wit, a revolver with a barrel less than twelve inches, without a license therefor as required by law; said firearm not being an antique unsuitable for use and not possessed as a curiosity or ornament: contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

(Signed) Charles F. Kelley, District Attorney.

[fol. 193] EXHIBIT

Department of Public Safety, Bureau of Police,

Philadelphia

Prisoner's Criminal Record

Name: Edward Grygieo, 3909 Glendale St., white-17 in 1928; 101 Warrick Settlement, Pottstown, Pa.

Alias: Francis Geyger, Edward Grygier, Frank Jackson, Joseph McGee.

Name of Complainant and Address: —— ——.

Name and Number of Officer making arrest: —— ——.

Number of Photograph: 80089.

Criminal Vocation: ——.

Criminal Record (as far as known):

1927. Burglary. Sent. 1 year Md. House of Corr. Discharged 1-17-28.

4-3-28. Phila. C. C. D. W. (revolver) and A. and B. on Officer. Court-Indicted 4-1928 on bills 671-672 Ct. R. 453

on 4-17-28 Pl. Guilty both bills and sent. to One yr. Co. Prison on bill 671 by Judge Frank Smith. 12-10-28 Discharged Act 1911, Judge F. Smith.

4-17-29. Phila. Burglary. W. O. B. court-Indicted 4-1929 on bill 1107 Ct. R. 453 on 4-23-29 Guilty sent. to Huntingdon Refty. by Judge Stern. 9-20-30 Paroled.

11-21-30. Phila. Robbery by holdup at point of gun and larceny of $50.00 in cash. W. O. B. court-Indicted 11-1930 on bills 1679-1680 Ct. R. 453 on 11-28-30 Pl. G. Sent. to 5 to 10 yrs. on bill 1679 in Eastern Penty. by Judge Heiligman. Rel. 5-28-36.

4-15-37. Phila. Burglary-Violation of Witkin Firearm Act. W. O. B. court-Indicted 4-1937 on bills 1046-1047 Ct. R. 453 on 4-28-37-Pl. guilty RSG. on bill 1046-Pl. G. Bill 1947. Sent. to 18 mos. to 3 yrs. Eastern Penty. at exp. unexpired parole on bill 1679 of 11-1930. Judge MacNeille. Re-Entered 10-28-41 as D-6085. Paroled 4-29-43.

[fol. 193a] Name: Edward Grygieo.

Alias: —— ——.

Name of Complainant and Address: —— ——.

Name and Number of Officer making arrest: —— ——.

Number of Photograph: 80089.

Criminal Vocation: ——.

Criminal Record (as far as known):

6-15-43. Pottstown, Pa. Agg. A. & B. and Burglary. $1500, court-Indicted 6-1943 on bills 461-462 Ct. R. 453 on 2-25-44 Guilty, sent. 5 to 10 yrs. on Bill 461 after expir. sent. on B. 1046 of 4-1937 and Bill 251-252 of 7-1937 and Bill 144 of 11-1943 in Eastern Penty. by Judge McDevitt. 11-27-44 Bill 461 Plead guilty. Sent. to Life Imprisonment as 4th Offender. Judge Joseph L. Kun, R. 453.

7-7-43. Phila. Burglary. W. O. B. court-Indicted 7-1943 on bills 251-252 in Ct. R. 653 on 7-26-43. Plead guilty RSG and sent. to 5 to 10 yrs. Eastern Penty. from 7-9-43 by Judge McDevitt.

1-23-44. Escaped from cell in New Eastern Penty., Graterford, Pa. 1-24-44 retd. to Cell. Indicted 11-1943 on Bill 144 in Montg. Co. Court 1-28-44-Pl. Guilty and sent. to 1 to 2 yrs. from expir. sent. now serving. Judge Geo. R. Corson. 2-4-44 sent. changed to begin at expir. of parole time now being served, at exp. of 5 to 10 yrs. service, then sent. on Bill 144 of 11-1943 will begin. 11-28-44 re-entered as D-8017 to serve sentence imposed 11-27-44 in Phila. by Judge Kun.

Reg. 5-28-36.

[fol. 194] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 53, Misc.

FRANCIS JOSEPH GRYGER, Petitioner,

vs.

C. J. BURKE, Warden

ORDER GRANTING CERTIORARI—January 19, 1948

On petition for writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is ordered transferred to the appellate docket.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

Petition not printed

No. 541

FRANCIS JOSEPH GRYGER,

Petitioner,

vs.

C. J. BURKE, Warden, Eastern State Penitentiary,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR THE PETITIONER

Archibald Cox.
Counsel for Petitioner.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Specification of errors to be urged	8
Summary of argument	9
Argument	11
I. The court has jurisdiction to, and should, consider in this proceeding petitioners's claims that he was deprived of liberty without due process of law	11
II. The sentencing of petitioner to life imprisonment without the assistance of counsel, although he was incapable of protecting his own interests, deprived him of liberty without due process of law	17
A. Due process forbids sentencing a defendant to life imprisonment, under the Habitual Criminals Act, without the "substance of a hearing," including the assistance of counsel whenever the defendant is unable adequately to represent himself	19
B. Under the rule of *Powell* v. *Alabama*, it was the duty of the court to offer petitioner the assistance of counsel	23
III. The Habitual Criminals Act, as applied in this case, violates the Fourteenth Amendment	30
Conclusion	32
Appendix	33

CITATIONS

Cases:

	Page
Batson v. *United States*, 137 Fed. 288	20
Betts v. *Brady*, 316 U. S. 455	29
Canizio v. *New York*, 327 U. S. 82	18
Carlese v. *New York*, 283 U. S. 51	30
Carter v. *Illinois*, 329 U. S. 173	18, 20, 22
Coates v. *Lawrence*, 46 F. Supp. 414	21
Cochrane v. *Kansas*, 316 U. S. 255	24
Commonwealth ex rel. Arnold v. *Ashe*, 92 Pitts. L. J. 445, 156 Pa. Super. 451	16
Commonwealth ex rel. Dugan v. *Ashe*, 338 Pa. 541	13, 15
Commonwealth ex rel. Foster v. *Ashe*, 336 Pa. 238,	13, 17, 20, 27
Commonwealth ex rel. Grierson v. *Ashe*, 353 Pa. 1	15
Commonwealth ex rel. Lewis v. *Ashe*, 335 Pa. 575	14
Commonwealth ex rel. Madden v. *Ashe*, 56 Atl. 2d 335	13
Commonwealth ex rel. McGlinn v. *Smith*, 344 Pa. 41	12, 17
Commonwealth ex rel. Nagle v. *Smith*, 154 Pa. Super. 392	13
Commonwealth ex rel. O'Leary v. *Ashe*, 152 Pa. Super. 322, 156 Pa. Super. 235	15
Commonwealth ex rel. Penland v. *Ashe*, 341 Pa. 337	12, 16
Commonwealth ex rel. Schultz v. *Smith*, 139 Pa. Super. 357	9, 11, 12
Commonwealth ex rel. Shaddock v. *Ashe*, 340 Pa. 286,	13, 14, 16
Commonwealth ex rel. Sloan v. *Ashe*, 133 Pa. Super. 32	14
Commonwealth ex rel. Toliver v. *Ashe*, 336 Pa. 206	14
Commonwealth ex rel. Turpack v. *Ashe*, 339 Pa. 403,	9, 13, 15
Commonwealth ex rel. Webb v. *Cain*, 158 Pa. Super. 222	16
Commonwealth v. *Harris*, 351 Pa. 325	11, 17
Commonwealth v. *Polens*, 327 Pa. 554	21
Commonwealth v. *Ritter*, 13 Pa. Dist. & Co. 285	20
De Meerleer v. *Michigan*, 329 U. S. 663	18, 30
Foster v. *Illinois*, 332 U. S. 134	29

Page

Graham v. *West Virginia*, 224 U. S. 616 30, 31
Halderman's Petition, 276 Pa. 1 13
Hawk v. *Olson*, 326 U. S. 271 18, 22
Hendryx v. *State*, 130 Ind. 265, 269 25
Honeyman v. *Hanan*, 300 U. S. 14 11
Kent v. *Sanford*, 121 F. 2d 216 21
Levell v. *Simpson*, 142 Kan. 892 21, 30
Lynch v. *New York*, 293 U. S. 52 11
Marino v. *Ragen*, 332 U. S. 561 11
McDonald v. *Massachusetts*, 180 U. S. 311 30
Miller v. *State*, 44 S. W. 162 (Tex. Cr. App.) 21
Palko v. *Connecticut*, 302 U. S. 319 18
People v. *Buchanan*, 256 App. Div. 1010 27
Powell v. *Alabama*, 287 U. S. 45 10, 18, 22, 23, 25, 29
Rex v. *Andrews*, 27 Cr. App. R. 12 23
Rice v. *Olson* 324 U. S. 786 18, 30
Snyder v. *Massachusetts*, 291 U. S. 97 20
State v. *Hughes*, 170 La. 1063 21
State v. *Zywicki*, 175 Minn. 508 21
Thomas v. *Hunter*, 153 F. 2d 834 21
Tomkins v. *Missouri*, 323 U. S. 485 18, 30
Townsend v. *Burke*, No. 542, this Term 17
White v. *Ragen*, 324 U. S. 760 18
Wilfong v. *Johnson*, 156 F. 2d 507 21
Williams v. *Kaiser*, 323 U. S. 471 11, 17, 18, 24

Statutes:

Pennsylvania Constitution, Art. IV. Sec. 9 16
Pennsylvania Penal Code of 1939, Sec. 1108, Purdon's Penna. Stat. Tit. 18, § 5108 13, 15, 19, 30
Purdon's Penna. Stat., Tit. 71, § 299 16

Other Authorities:

American Law Institute, Code of Criminal Procedure (1930), § 403 31
Annos. 58 A. L. R. 20, 82 A. L. R. 345, 116 A. L. R. 209 31
Hall, *Reduction of Criminal Sentences on Appeal*, 37 Col. L. Rev. 521 27

Page

McGuire and Holtzoff, *The Problem of Sentence in the Criminal Law*, 20 B. U. L. Rev. 422 20
Michael and Wechsler, Criminal Law and its Administration (1940) 27
Note, 9 Ind. L. J. 534 30
Opinion of the Attorney General, *Reception and Parole of Convicts*, 13 Dauph. 197 16
Opinion of the Attoreny General, *Discharge of Convicts (Jacobs' Case)*, 14 Dauph 61, 20 Pa. Dist. Rep. 471 16
Rubin, *The Public Defender*, 18 J. Crim. Law & Criminology, 347, 358 28
Sheldon and Eleanor Glueck, After-Conduct of Discharged Offenders (1946), 63-73 28
Sheldon and Eleanor Glueck, Five Hundred Criminal Careers (1930), 281-282 28

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 541

FRANCIS JOSEPH GRYGER,

Petitioner,

vs.

C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR THE PETITIONER

Opinion Below

The Supreme Court of Pennsylvania did not file an opinion.

Jurisdiction

Petitioner contends that his confinement in the Eastern State Penitentiary is a deprivation of liberty without due process of law. The Supreme Court of Pennsylvania is the highest court of the Commonwealth in which a decision in the suit could be had. Its order denying the petition for

habeas corpus was entered on May 28, 1947 (R. 45). Petitioner's motion for leave to proceed *in forma pauperis* and his petition for certiorari were filed on July 30, 1947, and granted on January 19, 1948 (R. 112). It is petitioner's contention that the order of the Supreme Court of Pennsylvania is based upon rulings adverse to petitioner's claims of constitutional right, and that therefore the jurisdiction of this Court is properly invoked under Section 237(b) of the Judicial Code as amended by the Act of February 13, 1925.

Questions Presented

1. Whether the Supreme Court of Pennsylvania ruled adversely to petitioner's claim that he was deprived of his liberty without due process of law.

2. Whether the sentencing of petitioner to life imprisonment as a fourth offender, without offering him the assistance of counsel, was a deprivation of liberty without due process of law.

3. Whether the sentencing of petitioner to life imprisonment as a fourth offender involved the application of an *ex post facto* law because one of petitioner's offenses was committed before the enactment of the Pennsylvania Habitual Criminals Act.

4. Whether the resentencing of petitioner to life imprisonment after a valid sentence had already been imposed on the same indictment subjected petitioner to double jeopardy in violation of the Fourteenth Amendment.

Statute Involved

Section 1108 of the Pennsylvania Penal Code of 1939, under which petitioner was sentenced to life imprisonment as a fourth offender, is set out in the Appendix, pp. 33-35, *infra*.

Statement

The facts which are either alleged in the petition for *habeas corpus* filed in the Supreme Court of Pennsylvania on May 15, 1947 (R. 24-38) or revealed by the certified record of the proceedings in the Court of Quarter Sessions (R. 45-110) may be summarized as follows:

On March 17, 1929, petitioner was convicted of burglary in the State of Maryland and sentenced to imprisonment for one year. He was released on January 17, 1928 (R. 43, 88-89, 97-98).[1] This was the first of the offenses on the basis of which petitioner was subsequently sentenced to life imprisonment as a fourth offender (R. 59, 89). The conviction occurred prior to the enactment of P. L. 854 of the Laws of 1929, which was reenacted as section 1108 of the Criminal Code of 1939 (Appendix, pp. 33-35 *infra*), and under which petitioner was sentenced to life imprisonment.

On April 27, 1928, petitioner was sentenced to imprisonment for one year on indictments charging him with assault and battery (R. 48-49) and carrying a concealed deadly weapon (R. 49). Later he was paroled (R. 48). This is not one of the convictions on which the subsequent sentence to life imprisonment was based.

On April 23, 1929, petitioner was convicted on Indictment No. 1107 charging him with burglary and related offenses (R. 50-52). On September 20, 1930, he was paroled (R. 89, 102). This was the second offense relied on in sentencing petitioner as a fourth offender (R. 59, 89, 99-102).

On November 26, 1930, petitioner was charged in Indictments Nos. 1679 and 1680 with robbery and entering with intent to rob (R. 52-54). He was convicted on a plea of

---

[1] The man named was an "Edward Grygier" whereas petitioner's name is Francis Joseph Grygier. Since petitioner does not deny that he was the man named in the indictment (R. 92), we assume for the purposes of this proceeding that petitioner was in fact the person named.

guilty and sentenced on Indictment 1679 to not less than five nor more than ten years in the penitentiary (R. 52-54). Petitioner was paroled on May 28, 1936 (R. 90). This was the third offense relied on by the commonwealth (R. 59, 89, 103-107).

On April 26, 1937, petitioner was indicted for burglary and related offenses (Indictment No. 1046, R. 54-56) and for carrying a concealed deadly weapon (Indictment No. 1047, R. 56-57). He pleaded guilty to receiving stolen goods and was sentenced to a term of from 18 months to 3 years at the expiration of the unexpired parole sentence last mentioned (R. 56, 90, 107). The Pennsylvania Habitual Criminals Act is applicable only when the four offenses are committed each within five years of the last prior offense, but any period of servitude in a penal institution is to be excluded from the computation of the five year period. Hence, although this was not one of the convictions upon which the life sentence was based, it is relevant because it tolled the running of the five year period between offenses. Petitioner was paroled on April 29, 1943, having completed his sentence under Indictment No. 1670 and served a portion of the sentence on Indictment 1046.

On June 21, 1943, petitioner was indicted on twelve bills, each charging burglary and receiving stolen goods (Indictments Nos. 251-262 incl., R. 66-84). On July 26, 1943, he pleaded guilty to the charges of receiving stolen goods and was sentenced on the same day on each of two bills to a term of imprisonment of not less than two and a half nor more than five years, the terms to be served consecutively at the expiration of the unexpired sentence on Bill 1046 (R. 91). These indictments were not included among the offenses underlying the subsequent life sentence but they are mentioned here because they explain some of the allegations in various petitions for *habeas corpus* and the conten-

tions made by petitioner at the hearing at which the life sentence was imposed.

When petitioner was sentenced on the indictments last mentioned (Nos. 251-262, incl.) there was also pending against him Indictment No. 461 charging burglary (R. 63-64) and Indictment No. 462 charging aggravated assault and battery (R. 64-65). On June 28, 1943, petitioner pleaded not guilty to Indictments Nos. 461 and 462 (R. 64, 65). On July 26, 1943, he pleaded guilty to one count in each of Indictments Nos. 251-262 inclusive and was sentenced as stated above. Petitioner alleges that he and his attorney believed that Indictments Nos. 461 and 462 were also disposed of at that time (R. 29-95). The certified copy of the transcript of the proceedings at the imposition of sentence on Indictments Nos. 251-262 supports this allegation for its caption includes Indictments Nos. 461-462 and testimony was taken concerning the attempted burglary and assault upon Harry Haas which are alleged in the latter indictments. Nevertheless, petitioner was tried again on February 25, 1944, and found guilty. He was thereupon sentenced on Indictment 461 to not less than five nor more than ten years to be computed from the expiration of the sentence he was then serving (R. 64). This was the fourth offense relied on by the commonwealth (R. 91-92) and the one on which petitioner was later sentenced to life imprisonment.

On May 4, 1944, there was filed in the Court of Quarter Sessions an information relative to Indictment No. 461 charging that petitioner had been found guilty of burglary as set forth in that indictment "having been previously convicted and sentenced on certain other crimes three or more times, to wit, the crimes of robbery and burglary . . ." (R. 58-60). A copy of the information was served on petitioner on May 9, 1944 (R. 26). At the time, petitioner was confined in the penitentiary without financial

means to prepare a defense (R. 29). Immediately he petitioned "the Prison Officials to have access of Books of Law which would be an aid to him in preparing his own defense, • • • but these Books were denied him by the Prison Authorities" (R. 29) and "also was he denied a copy of the [Fourth Offender] Act itself, all access to any legal forms or books which may have been an aid to him in preparing a defense" (R. 33-34). On November 27, 1944, he was brought from the penitentiary into the Court of Quarter Sessions and the information charging him as a fourth offender was read aloud (R. 85-87). Without further explanation the petitioner was required to answer whether he was the person charged in the indictments listed in the information (R. 35, 88) and the District Attorney offered the prior indictments on which he relied in evidence. Petitioner was then asked whether he had anything to say before sentence was imposed. He protested that he was not guilty of the burglaries with which he had been charged (R. 93), apparently referring to Indictments Nos. 251-262 incl. on which he had pleaded guilty to receiving stolen goods and on which the burglary charges were not pressed. Petitioner also protested the unfairness of sentencing him again for crimes for which he had already been sentenced (R. 95-96). The court tried briefly to explain the nature of the proceeding but evidently it was not made clear to petitioner for the prosecutor commented "He doesn't understand" (R. 96). Petitioner was never advised that the court had discretion not to impose a life sentence. No evidence was offered and no plea was heard in mitigation.

Petitioner thereupon was sentenced to life imprisonment. The sentence of February 25, 1944 and the prior sentences were vacated (R. 60, 96, cf. R. 39, 41-42).

Petitioner has been actively seeking review of the sentence to life imprisonment ever since it was imposed. His current petition for *habeas corpus* alleges "that immedi-

ately after the life sentence was inflicted upon petitioner he, still being unfamiliar of the provisions of the Act, petitioned the Board of Trustees of the Eastern State Penitentiary to release funds from the Prisoners' Welfare Fund to hire counsel to appeal his conviction" (R. 30). Possibly the date is wrong for the petition also sets forth that the request was denied on the basis of a letter from the District Attorney dated December 21, 1945 (R. 31). In any event, on February 23, 1945, he wrote a letter to the prothonotary of the Supreme Court of Pennsylvania complaining that he did not have a fair trial (R. 1-3). The letter makes plain his lack of education and unfamiliarity with legal proceedings although, like his other pleadings, it shows that he has spent much time attempting to find a remedy for a procedure which he felt was fundamentally unfair. The Supreme Court of Pennsylvania treated the letter as a petition for *habeas corpus* but on March 19, 1945, it was denied (R. 3).

On September 13, 1945, petitioner filed a second petition for *habeas corpus* elaborating the confentions made in his earlier letter (R. 4-12). On October 1, 1945, the petition was denied as premature. The court filed a brief opinion pointing out that petitioner "is at present confined in the Eastern Penitentiary under prior sentences which are not attacked and which will not expire at the earliest until February 29, 1949. He is, therefore, now validly restrained of his liberty. Consequently his petition for habeas corpus must be denied" (R. 13). On October 18, 1945, petitioner sent a letter to the court which was followed on October 26 by a petition for reconsideration, in both of which he pointed out that the court had erred in stating that he was presently confined under the prior sentences, because they had been vacated in accordance with the Habitual Criminals Act (R. 16). On June 27, 1945, the petition for reconsideration was denied (R. 22). Petitioner repeated his conten-

tions in a petition for certiorari filed on March 26, 1947, which was also denied (R. 22-23).

On May 15, 1947, petitioner filed in the Supreme Court of Pennsylvania the petition for habeas corpus which forms the basis for the present proceeding in this Court. The petition (R. 24-38) alleged the facts which have been summarized and particularly pointed out that the court had erred in the earlier proceedings in holding that petitioner was being held under unexpired sentences antedating the life sentence (R. 24-25, 27, 37-38). A rule to show cause was issued and answers were filed by the warden and the district attorney. The warden answered that petitioner was being held under the life sentence imposed on Bill No. 461 and attached a certified copy of the commitment (R. 39-40). The district attorney's answer summarizes the previous petitions for habeas corpus and concedes that "the petitioner was technically correct" in pointing out that "he is serving nothing but a life sentence and the other sentences were vacated" (R. 40-42).

The record in the Court of Quarter Sessions was also certified to the Supreme Court. Thereafter on May 28, 1947, the Supreme Court of Pennsylvania entered an order discharging the rule to show cause and denying a writ of habeas corpus (R. 45).

Specification of Errors to Be Urged

The Supreme Court of Pennsylvania erred:

1. In failing to hold that under the circumstances set forth in the petition for habeas corpus, petitioner was constitutionally entitled to the assignment of counsel.

2. In failing to hold that under the circumstances set forth in the petition for habeas corpus, petitioner was sentenced to life imprisonment without due process of law.

3. In failing to hold that the Pennsylvania Habitual Criminals Act, as here applied, is void as an *ex post facto* law prohibited by Article I, Section 10, of the constitution.

4. In failing to hold that the Pennsylvania Habitual Criminals Act, as here applied, violates the Fourteenth Amendment by subjecting petitioner to imprisonment twice for the same offense.

5. In refusing the writ of habeas corpus.

Summary of Argument

I

The Court has jurisdiction to, and should, consider the federal questions raised by petitioner. Although the court below delivered no opinion, it seems plain that its decision cannot rest on State procedural grounds. A petition for habeas corpus is the proper method under Pennsylvania law for challenging a sentence imposed without the assistance of counsel or in violation of other constitutional rights. *Commonwealth ex rel. Schultz* v. *Smith*, 139 Pa. Super. 357, 367-368. Such petitions have been entertained on their merits where the challenge was to a life sentence as a fourth offender. *Commonwealth ex rel. Turpacke* v. *Ashe*, 339 Pa. 403. The decision of the court below denying petitioner's earlier application rested upon the mistaken belief that petitioner was serving previous sentences. The mistake was corrected in the present proceeding.

II

Petitioner was sentenced to life imprisonment without due process of law. Inherent in the notion of fairness is ample opportunity to meet an accusation. Under many circumstances the opportunity is ample only if the accused is represented by counsel. Hence "* * * where the defendant

is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law." *Powell* v. *Alabama*, 287 U. S. 45, 71. This rule is as applicable to a proceeding on the issue of sentence under an Habitual Criminals Act as it is at other stages of the trial.

When petitioner was charged as a fourth offender, he was imprisoned in the penitentiary without funds or opportunity to prepare his case. He was refused permission to read the applicable statute. Although a sentence of life imprisonment might be imposed, he was not warned of his rights when he was brought before the court. His subsequent letters and pleadings make it plain that he lacked the intelligence and training to protect his own interests. No evidence or plea was heard in mitigation. Through ignorance and the want of counsel petitioner lost his statutory right to have the "justice" of the life sentence reviewed on appeal. In short, the record demonstrates without contradiction that unfairness permeated the proceeding which resulted in his confinement. Therefore the sentence is void.

III

The Pennsylvania Habitual Criminals Act, as here applied, is an unconstitutional *ex post facto* law. It also violates the Fourteenth Armendment by subjecting a fourth offender to two sentences for the same offense.

ARGUMENT

I

The Court has jurisdiction to, and should, consider in this proceeding petition's claims that he was deprived of liberty without due process of law.

It is the settled rule that this Court cannot undertake to review a judgment resting upon a State ground adequate to sustain it. *Honeyman* v. *Hanan*, 300 U. S. 14, 18; *Lynch* v. *New York*, 293 U. S. 52. The Supreme Court of Pennsylvania did not file an opinion explaining the basis of its order dismissing the petition for habeas corpus. Hence there lies at the threshold of the instant case the inquiry whether the Supreme Court of Pennsylvania dismissed the petition for habeas corpus on State procedural grounds, or ruled adversely on the merits to petitioner's claims that the life sentence was imposed in violation of the due process clause of the Fourteenth Amendment. Cf. *Williams* v. *Kaiser*, 323 U. S. 471; *Marino* v. *Ragen*, 332 U. S. 561. We submit that an analysis of the various proceedings instituted by petitioner in the State court, and of the pertinent precedents, makes it plain that the petition for habeas corpus was an appropriate method for attacking the life sentence on constitutional grounds and that therefore the federal question presented must have been decided by the court below. Cf. *Williams* v. *Kaiser*, 323 U. S. 471.

The writ of error *coram nobis* is rarely used in Pennsylvania (*Commonwealth* v. *Harris*, 351 Pa. 325, 327-330) and the commonwealth has not provided a statutory method for attacking an invalid sentence after the expiration of the term at which it was imposed. Habeas corpus, however, has been given liberal scope. It is available not only to challenge the jurisdiction of the court which passed the sentence but also to assert fundamental constitutional rights.

In *Commonwealth ex rel. Schultz* v. *Smith*, 139 Pa. Super. 357, 367-368, the governing principles were summarized as follows:

> • • • under the liberal and humane construction given by our Supreme Court to our Habeas Corpus Act (February 18, 1785, 2 Sm. L. 275), and the practice which has been established concerning it, there are certain basic and fundamental errors which may be corrected on habeas corpus, even though the defendant failed to appeal from the judgment, and which are recognized as exceptions to the principle relied on by the district attorney. For example, where an erroneous and illegal sentence has been imposed • • • whether it be excessive • • •, or a lumping sentence • • •, or a double sentence for the same offense • • •, or whether the minor offense is swallowed up in the greater • • •, or where the sentence was increased after the end of the term • • •, it may be corrected on habeas corpus, for the error is basic and fundamental and so destructive of justice, that it cannot be permitted to stand, even though not appealed from.
>
> So here, the denial of counsel to one accused of such grave crimes as were involved in this case, is not only a denial of a constitutional right, but is a basic and fundamental error striking at the fairness and justice of the whole trial, • • •. Such a basic and fundamental error, which affects the justice and regularity of the whole trial, may be relieved against in this Commonwealth by writ of habeas corpus.

In *Commonwealth ex rel. Penland* v. *Ashe*, 341 Pa. 337, 341-342, the Supreme Court approved the opinion quoted above as showing that "there are certain basic and fundamental errors which may be corrected on habeas corpus • • •".

Petitioner's chief contention is that he was denied a fair hearing because, although he was incapable of protecting his own interests, he was not given the assistance of counsel in his defense. This defect plainly falls within the

category of fundamental errors. *Commonwealth ex rel. Schultz* v. *Smith, supra;* cf. *Commonwealth ex rel. McGlinn v. Smith,* 344 Pa. 41. Likewise, the Supreme Court of Pennsylvania has considered on habeas corpus the contentions here made that the Habitual Criminals Act is unconstitutional. *Commonwealth ex rel. Foster* v. *Ashe,* 336 Pa. 238. It is also settled by the Pennsylvania decisions that habeas corpus will lie even though the prisoner is not entitled to be released from confinement. *Halderman's Petition,* 276 Pa. 1; *Commonwealth ex rel. Shaddock* v. *Ashe,* 340 Pa. 286; *Commonwealth ex rel. Nagle* v. *Smith,* 154 Pa. Super. 392; *Commonwealth ex rel. Madden* v. *Ashe,* 56 Atl. 2d. 335 (Pa. Super.).

In accordance with these principles the Supreme Court of Pennsylvania has entertained petitions for habeas corpus to determine the validity of life sentences imposed under the Habitual Criminals Act, Pennsylvania Penal Code of 1939, sec. 1108, Purdon's Penna. Stat., Tit. 18, § 5108, Appendix pp. 33-35, *infra.* In *Commonwealth ex rel. Dugan* v. *Ashe,* 338 Pa. 541, it appeared that the prisoner had been sentenced under three indictments. Under the first two indictments long term indeterminate sentences were imposed; under the third indictment the prisoner was given a life sentence to begin upon the expiration of the first two sentences. On a petition for habeas corpus the Supreme Court vacated the first two sentences and ruled that the life sentence should take effect immediately. Later the court entertained a second petition for habeas corpus filed by the same prisoner challenging the validity of the life sentence on the ground that an information charging him as a fourth offender had not been filed in accordance with the Habitual Criminals Act. The court ruled adversely to the prisoner's contention on the merits, but no question was raised concerning the prematurity of the petition or the appropriateness of habeas corpus. *Commonwealth ex rel. Dugan* v.

Ashe, 342 Pa. 77, certiorari denied 314 U.S. 610. In *Commonwealth ex rel. Turpack* v. *Ashe*, 339 Pa. 403, the court entertained a petition for habeas corpus and vacated a life sentence erroneously imposed under the Habitual Criminals Act even though the prisoner was still serving three other sentences which he did not challenge. It would seem plain, therefore, that under Pennsylvania law habeas corpus is a proper remedy for challenging an unlawful life sentence imposed under the Habitual Criminals Act, even though the prisoner may not be entitled to an immediate release.

Nothing in the opinion of the Supreme Court of Pennsylvania denying petitioner's earlier application for habeas corpus throws doubt on this conclusion. The opinion proceeded on the assumption that petitioner "is at present confined in the Eastern Penitentiary under prior sentences which are not attacked and which will not expire at the earliest until February 25, 1949" (R.13). For this reason the petition was said to be premature. *Ibid.* If the court's premise had been sound, the decisions cited in the opinion would support its conclusion. In *Commonwealth ex rel. Toliver* v. *Ashe*, 336 Pa. 206, the prisoner was detained (1) for violation of his parole under an earlier sentence not yet expired and (2) under a subsequent sentence to a term of imprisonment which was to be served concurrently with the imprisonment for parole violation. The court held that since the second sentence was not challenged, habeas corpus was not available. In *Commonwealth ex rel. Lewis* v. *Ashe*, 335 Pa. 575, the prisoner sought to challenge by habeas corpus a sentence imposed for the crime of escape; the court held that although the sentence for escape was erroneous, it would be premature to remand the prisoner for resentencing because his original sentence had not yet expired. In *Commonwealth ex rel. Sloan* v. *Ashe*, 133 Pa. Super. 32, it was held that habeas corpus to challenge one of

several concurrent sentences was premature if the application was made before the expiration of the other, valid sentences. *Contra: Commonwealth ex rel. Shaddock* v. *Ashe*, 340 Pa. 286. In all three cases, therefore, the prisoner was being held under two outstanding concurrent sentences one which he conceded to be valid and the other of which he sought to attack. None of them involved a sentence to life imprisonment as a fourth offender. Consequently, whatever the pertinence of those cases so long as it was erroneously assumed that petitioner was still serving an earlier sentence, they became plainly irrelevant once it was made to appear that the prior sentences had been vacated, leaving in force only the challenged sentence to life imprisonment.

In the present proceeding this crucial fact was properly brought to the attention of the court below. The petition for habeas corpus pointed out that the court had been under a misapprehension in the earlier case when it assumed that petitioner was serving several sentences (R. 24-25, 27, 37-38), and the district attorney conceded in his answer that the petitioner's contention that he was serving only the life sentence was technically correct (R. 41-42). The Habitual Criminals Act explicitly directs the court to "vacate any previous sentence". Penal Code of 1939, sec. 1108(d), Purdon's Penna. Stat., Tit. 18 § 5108(d), Appendix p. 34, *infra*. Under the circumstances the only reasonable inference is that the court considered petitioner's application on its merits in accordance with the principles governing the use of habeas corpus in Pennsylvania and the practice followed in *Commonwealth ex rel. Dugan* v. *Ashe, supra*, and *Commonwealth ex rel. Turpack* v. *Ashe, supra*.[2]

---

[2] The decisions under paragraph (a) of the Habitual Criminals Act, which provides for a sentence twice the length of the normal sentence when a defendant is convicted of certain specified crimes for a second time, are too confused to be of value. In some cases the courts have refused to entertain applications challenging the imposition of the double sentence before the expiration of the normal minimum sentence which would be

Any other conclusion would seem to mean that Pennsylvania provides no timely judicial remedy even though petitioner shows that he is held exclusively by virtue of a life sentence imposed in violation of due process of law. This would be highly prejudicial. On the record the prior sentences have been vacated, and the warden holds petitioner only under the sentence of November 27, 1944 (R. 39-40). The prison authorities, the parole board and other executive officers, including the Governor on any appeal for clemency,[3] will treat petitioner as a life termer unless the courts correct the sentence; indeed they are probably obliged to follow this course. Cf. *Reception and Parole of Convicts*, 13 Dauph. 197; *Discharge of Convicts (Jacobs' Case)*, 14 Dauph. 61, 20 Pa. Dist. Rep. 471. While the difference in time may no longer be significant in this respect in petitioner's case, it is also to be taken into account that a delay until any underlying sentences have expired would often result in a hearing on a record which will be stale, with the witnesses scattered and their recollection dim. Nor can we suppose that the Pennsylvania courts, regardless of practical consequences, are wholly indifferent to the suffering imposed by delaying the opportunity for justice. Such a defect in its judicial system should not be attributed to a State the highest court in which has held that *habeas corpus* is available to challenge a sentence imposed in disregard of fundamental constitutional rights (*Commonwealth ex rel. Penland* v. *Ashe*, 341 Pa. 337, 341-342), and which declared recently, when *coram nobis* was improperly invoked, that "this court if convinced in any case brought

---

imposed for the offense." [illegible] e. g. *Commonwealth ex rel. O'Leary* v. *Ashe*, 152 Pa. Super. 322, 156 Pa. Super. 235; cf. *Commonwealth ex rel. Grierson* v. *Ashe*, 353 Pa. 1. Other decisions reach the opposite result. *Commonwealth ex rel. Arnold* v. *Ashe*, 92 Pitts. L. J. 445, affirmed 156 Pa. Super. 451. And see *Commonwealth ex rel. Shaddock* v. *Ashe*, 340 Pa. 286; *Commonwealth ex rel. Webb* v. *Cain*, 158 Pa. Super. 222.

[3] The power to pardon and commute sentences is conferred on the Governor by Pennsylvania Constitution, Art. IV, Sec. 9. See also Purdon's Penna. Stat., Tit. 71, § 299.

before it that a grievous wrong has been done therein will promptly take appropriate measures to *undo* it." (*Commonwealth* v. *Harris*, 351 Pa. 325, 333).

Under the circumstances of the present case there is no basis for suggesting that this Court ought to infer that the petition was denied on procedural grounds because any other conclusion would imply that the court below approved a sentence passed in disregard of petitioner's constitutional rights. Compare the majority and dissenting opinions in *Williams* v. *Kaiser*, 323 U. S. 471. The court below has expressly held that the Fourteenth Amendment does not require an offer to assign counsel unless the defendant takes the initiative in requesting such assistance. *Commonwealth ex rel. McGlinn* v. *Smith*, 344 Pa. 41, 48; see also the answer to the petition for certiorari which was filed by the Commonwealth in *Townsend* v. *Burke*, No. 542, this Term. The court below has also ruled adversely to the other contentions made by petitioner on the merits. *Commonwealth ex rel. Foster* v. *Ashe*, 336 Pa. 238. Consequently, there is every reason to believe that in the instant case the court has followed its prior rulings on the federal questions and did not dispose of the petition on State procedural grounds.

II

The sentencing of petitioner to life imprisonment without the assistance of counsel, although he was incapable of protecting his own interests, deprived him of liberty without due process of law.

As pointed out in the Brief for the Petitioner in *Townsend* v. *Burke*, No. 542, the course of decision here defines with no little particularity the canons of decency and fairness which are embodied in the due process clause of the Fourteenth Amendment. Inherent in the notion of fairness is ample opportunity to meet an accusation. Under many

circumstances the opportunity is ample only when the accused has the assistance of counsel for his defense. Hence, while the Fourteenth Amendment, unlike the Bill of Rights, does not impose upon the States a rigid requirement of the assistance of counsel in all cases (*Betts* v. *Brady*, 316 U. S. 455; *Foster* v. *Illinois*, 332 U. S. 134), due process of law does require that counsel be appointed, whether requested or not, wherever such assistance is necessary to enable the accused adequately to present his answer to the charge against him. *Powell* v. *Alabama*, 287 U. S. 45, 71-73; *Williams* v. *Kaiser*, 323 U. S. 471; *Tomkins* v. *Missouri*, 323 U. S. 485; *Rice* v. *Olson*, 324 U. S. 786, 788-789; *De Meerleer* v. *Michigan*, 329 U. S. 663; see *White* v. *Ragen*, 324 U. S. 760, 763-764; *Hawk* v. *Olson*, 326 U. S. 271, 276; *Canizio* v. *New York*, 327 U. S. 82, 85. "And the need for such assistance may exist at every stage of the prosecution, from arraignment to sentencing" (*Carter* v. *Illinois*, 329 U. S. 173, 174).

It is our contention that the application of these settled principles to the facts stated in the petition for habeas corpus shows that the sentence imposed on November 27, 1944, is void because petitioner needed, but was not offered, the assistance of counsel in his defense. We base this contention on two propositions:

First. Since the imposition of sentence is discretionary under the Pennsylvania Habitual Criminals Act, due process forbids the sentencing of a defendant to life imprisonment without "the substance of a hearing" (*Palko* v. *Connecticut*, 302 U. S. 319, 327). The defendant must therefore be given ample opportunity, including the assistance of counsel if necessary, to prepare and present with understanding and intelligence those considerations which are favorable to his case. Stated otherwise, we submit that the same principles which are applicable to arraignment and trial, are no less applicable at the imposition of a discretionary life sentence.

Second. Since the record shows that petitioner was unable to prepare and present his case, the appointment of counsel was necessary, in this instance, to the substance of a hearing.

Our argument in support of these two propositions follows.

A. *Due process forbids sentencing a defendant to life imprisonment, under the Habitual Criminals Act, without "the substance of a hearing", including the assistance of counsel whenever the defendant is unable adequately to represent himself.*

The Pennsylvania Habitual Criminals Act, unlike the mandatory laws of many States, gives wide discretion to the court in passing sentence on a fourth offender. Penal Code of 1939, P. L. 872, § 1108, Purdon's Penna. Stat. Tit. 18, § 5108, Appendix, p. 33, *infra*. Clause (b) provides that when the prior convictions are shown at the trial for the fourth offense, the defendant—

> shall, upon conviction * * *, be sentenced, *in the discretion of the judge trying the case,* to imprisonment in a state penitentiary for the term of his natural life. [Italics supplied.]

Clause (d), which authorizes a separate proceeding on an information charging the defendant as a fourth offender at any time within two years of the fourth conviction, provides that—

> the court *may* sentence him to imprisonment for life *as prescribed in clause* (*b*) of this section : : : [Italics supplied.]

Furthermore, such a sentence can be appealed to the Supreme or Superior Courts "not only as to the alleged legal errors but also as to the justice thereof." The Supreme Court of Pennsylvania has taken note of the wide

discretion which these provisions confer upon the courts. *Commonwealth* v. *Ashe*, 336 Pa. 238, 240.

It needs no argument to demonstrate that the right to the substance of a hearing on the question whether a life sentence should be imposed is "a principle of justice so deep rooted in the traditions and consciences of our people as to be ranked as fundamental" (*Snyder* v. *Massachusetts*, 291 U. S. 97, 105). "The imposition of sentence in a criminal case is probably the most weighty action taken by a judge. No other type of final order or judgment may be said to equal a judgment fixing sentence in its far-reaching effect, both on society and on the individual immediately concerned." McGuire and Holtzoff, *The Problem of Sentence in the Criminal Law*, 20 B. U. L. Rev. 422, 426. Cf. *Carter* v. *Illinois*, 329 U. S. 173, 178. Under the Pennsylvania Habitual Criminals Act the importance of a hearing is greatly multiplied. As in the present case, the judge who imposes the sentence may not have heard evidence concerning any of the crimes. The imposition or withholding of sentence is entirely discretionary. The judgment may imprison the defendant for life—a sentence of which it has been said that "perhaps, after all, the penalty of life imprisonment is not so much a substitute for life imprisonment as a slower method of inflicting it" (*Commonwealth* v. *Ritter*, 13 Pa. Dist. & Co. 285, 293).

In view of these considerations the courts before which the question has arisen have generally held, under less compelling circumstances, that the defendant is entitled to the assistance of counsel when a discretionary sentence is passed. In *Batson* v. *United States*, 137 F. 2d 288, 289, the Circuit Court of Appeals for Tenth Circuit held—

> We believe that an accused should have an opportunity to be heard by counsel on the sentence to be imposed, and that a court should not impose sentence in the absence of counsel without expressly ascertain-

> ing that a defendant does not desire his presence. Many considerations influence the length of a sentence which is to be imposed, and a defendant should have the opportunity to have his attorney present any mitigating circumstances to the court for its consideration in determining the weight of the sentence.

Although the *Batson* case did not require a decision as to whether this was a constitutional right, the court adopted that view shortly later in *Thomas* v. *Hunter*, 153 F. 2d 834. These decisions were followed by the Ninth Circuit in *Wilfong* v. *Johnston*, 156 F. 2d 507, 510, which held that "because of the failure of petitioner to be represented by counsel at the time of pronouncement of judgment and sentence he was deprived of a constitutional right and, therefore, the judgment and sentence is void." See also *Kent* v. *Sanford*, 121 F. 2d 216, 218 (C. C. A. 5); *Coates* v. *Lawrence*, 46 F. Supp. 414, 4[illegible].

In the State courts the question raised has rarely been considered. We have found but one case where the right to have counsel present at the sentencing was denied, and the opinion relies wholly upon local statutes. *State* v. *Hughes*, 170 La. 1063. In *Miller* v. *State*, 44 S. W. 162 (Tex. Cr. App.) and *Commonwealth* v. *Polens*, 327 Pa. 554, the absence of the defendant's attorney was held not to be in error because it was plain that no prejudice had resulted. It is noteworthy, however, that in the latter case the court "condemned" the practice as "most unusual" (p. 556). Furthermore, in upholding the constitutionality of proceedings against habitual criminals to impose additional punishment, the courts have been careful to note that the right to a full hearing, including the assistance of counsel, was guaranteed. See e.g. *Levell* v. *Simpson*, 142 Kan. 892, 898; *State* v. *Zywicki*, 175 Minn. 508, 510.

Finally, while this Court has not considered the precise question, its opinions strongly indicate that the principles

which determine the right of the accused to counsel at earlier stages in a criminal proceeding are also controlling when he is sentenced. In *Powell* v. *Alabama*, 287 U. S. 45, 68, the Court referred to the layman's need for the guiding hand of counsel "at every step in the proceedings against him." In *Hawk* v. *Olson*, 326 U. S. 271, 278, was held that "denial of opportunity to consult with counsel on any material step • • • violates the Fourteenth Amendment." Later in *Carter* v. *Illinois*, 329 U. S. 173, 174, the Court specifically recognized that the need for the assistance of counsel "may exist at every stage of the prosecution from indictment to sentencing."

We do not mean to imply that every sentence passed in the absence of counsel is void for want of due process. As at other stages of a criminal prosecution the Fourteenth Amendment leaves the State considerable flexibility in formulating local procedures, provided that where issues of fact or law are to be determined the substance of a hearing is assured. Whether the assignment of counsel is essential to such a hearing will also depend upon the circumstances of the particular case. The weight of the permissible sentence, the range of discretion vested in the court, the opportunities the court has had at other stages of the prosecution to consider the character of the offense, and the defendant's opportunity as well as his ability to protect his own interests, are factors to be taken into account. When the sentence is attacked collaterally, the prisoner will be obliged to prove that "for want of benefit of counsel an ingredient of unfairness actively operated in the process that resulted in his confinement" (*Foster* v. *Illinois, supra*, 137). Due process of law requires, however, that the rule of *Powell* v. *Alabama* be followed in sentencing as well as at other stages of a prosecution. In a proceeding under the Habitual Criminals Act, where the sentence may be to life imprisonment and "where the defendant is unable to employ counsel, and

is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law" (*Powell* v. *Alabama*, 287 U. S. 45, 71). Compare *Rex* v. *Andrews*, 27 Cr. App. R. 12 (Court of Criminal Appeal, 1938).

B. *Under the rule of Powell* v. *Alabama, it was the duty of the court to offer petitioner the assistance of counsel*

The uncontradicted allegations in the application for habeas corpus show beyond doubt that petitioner was sentenced to life imprisonment in disregard of the minimum standards of fairness laid down in *Powell* v. *Alabama* and subsequent cases. When petitioner was served with the information charging him as a fourth offender, he was confined in the penitentiary without the financial means of preparing a defense (R. 29). Paragraph 13 of the application avers that he immediately sought access "to Books of Law which would be an aid to him in preparing his own defense, and that these Books were denied him by the Prison Authorities" (R. 29). Paragraph 19 elaborates the allegation by asserting specifically that "also was he denied a copy of the Act itself" (R. 33-34). It is no answer to these allegations to assert either that defendant was "a seasoned criminal knowing the ways of the court" (cf. R. 31) or, alternatively, that access to legal materials would not have benefited petitioner because he lacked the necessary intelligence and legal training. Whatever other knowledge of court procedures he may have acquired, petitioner "was unfamiliar with the 'Fourth Offender Act,' knowing none of its provisions" (R. 30). And while it is true that petitioner was not capable of presenting his case adequately, it was the more unfair, in view of his want of counsel, to deny him even the opportunity to do what little he could. Upon read-

ing the Act, he might well have come to understand, first, that the trial court had discretion to withhold the maximum punishment, a point which passed unnoticed at the hearing (see p. 26, *infra*); second, that he was entitled to appeal not merely upon points of law but on the "justice" of the sentence; and, third, that on such an appeal the State would furnish a reasonable attorney's fee. According to petitioner's allegations this knowledge was kept from him by refusing his request for a copy of the statute. If the allegations are proved, the sentence is void for want of due process of law. Cf. *Cochrane* v. *Kansas*, 316 U. S. 255.

Quite apart from the prison authorities' suppression of petitioner's efforts to prepare a defense, however, the proceeding was unfair. Apparently friendless, petitioner's confinement alone would have raised insuperable obstacles to preparing an answer to the information or a plea in mitigation. Like any uneducated layman, he also had need for the aid of counsel "lest he be the victim of overzealous prosecutors, of the law's complexity or of his own ignorance or bewilderment" (*Williams* v. *Kaiser*, 323 U. S. 471, 476). The voluminous pleadings which he has filed since the life sentence was imposed are ample evidence that despite his diligence petitioner lacked the education and intelligence to prepare and present his case in court. (See especially the letter at R. 14-15.) At the hearing he endeavored to protect his interests but was so far incapable of comprehending the issues that the assistant district attorney remarked, "He doesn't understand" (R. 96). No plea in mitigation was presented and although the court in fact had discretion, the hearing was conducted as if life imprisonment were mandatory (see p. 26 *infra*).

Immediately after petitioner was sentenced he sought to appeal, but the prison authorities refused to release

funds for the purpose (R. 30).[4] Within two months he wrote a letter to the Supreme Court of Pennsylvania protesting that he had not had a fair hearing (R. 1-3), and shortly later he filed a layman's petition for habeas corpus (R. 4-12). These inept efforts to secure review of the trial court's action are proof that it was through ignorance and want of skill that the statutory right of appeal was lost; neither the court nor the district attorney nor the prison authorities took the trouble to point out that the statute provided for an appeal and an allowance of counsel fees. Taking all the circumstances together the case is comparable to the extreme illustration of fundamental unfairness cited in *Powell* v. *Alabama*, 287 U. S. 45, 72, where the Court said, quoting from *Hendryx* v. *State*, 130 Ind. 265, 269,—

> "Where a prisoner is without legal knowledge, is confined in jail, absent from his friends, without the aid of legal advice or the means of investigating the charge against him, it is impossible to conceive of a fair trial where he is compelled to conduct his cause in court, without the aid of counsel. * * * Such a trial is not far removed from an *ex parte* proceeding."

Not only is it plain that petitioner needed counsel but the record also demonstrates that "for want of benefit of counsel an ingredient of unfairness actively operated in the process that resulted in his confinement" (*Foster* v. *Illinois, supra*, 134). Even at this late date and confined to the printed record, the unfairness of the proceeding is apparent in at least four specific respects:

---

[4] The record is somewhat confusing on this point. Petitioner alleges that he sought to appeal "immediately" but that the prison authorities refused to release the necessary funds because of a letter from the assistant district attorney dated more than a year after sentence (R. 30-31). It is not improbable, however, that such a delay occurred in giving a final answer to the request for funds although it was presented immediately after sentence.

(1) The entire proceeding appears to have been conducted on the mistaken assumption that the court was obliged to sentence petitioner to imprisonment for life. Throughout the hearing Judge Kun repeatedly spoke as if the sentence were mandatory:

> * * * It becomes my duty, under the Act of Assembly, * * * to impose teh sentence *required by the Act.* (R. 94, fol. 154; italics supplied.)
>
> The law is that a person who has been found guilty of felony four times within the periods prescribed *must be punished because of those successive convictions.* (R. 94, fol. 155; italics supplied.)
>
> In other words, the law has come to this viewpoint: * * * [such an offender] *must be removed from the possibility of ever committing that offense again.* (R. 95, fol. 155; italics supplied.)
>
> I have to do my duty under the law. (R. 96, fol. 158.)

Even if the court did not act under this misapprehension, petitioner was given an erroneous impression and thereby led to omit whatever plea in mitigation he might have been able to present.

(2) On the question of sentence it was important to inquire further into petitioner's criminal activities. The superficial examination which is possible on this record strongly suggests that he was a petty sneak thief rather than a hardened gangster of the kind with which the Habitual Criminal Acts are chiefly intended to deal. In this respect the record of his fourth felony conviction is highly revealing. The principal witness, one Haas, saw a man, whom he later identified as petitioner, prowling about a house, put a rug against a window and start to break it with a rock. Then the witness ran and grappled with the man but he escaped. (See the testimony of Harry Haas in the certified transcript of record filed by petitioner as

Exhibit 3 to the Petition for Certiorari.) These were the offenses for which petitioner was convicted on Indictments Nos. 461 and 462 (R. 63-65).

The crimes covered by Indictments Nos. 251-262, inclusive, involved thefts of personal property ranging from $850 to $29, $11 and $20. (R. 66-84). Indictments Nos. 1679 and 1680 appear to have been based upon a robbery of $26.50 (R. 52-54). In other instances the sums were somewhat larger but the largest amount taken at any one time was property valued at $900. (Indictment No. 1107, R. 50-51). The total over a period of fifteen years was less than $3,000. These facts are obviously relevant on the issue of punishment. Cf. *People* v. *Buchanan*, 256 App. Div. 1010. Compare Hall, *Reduction of Criminal Sentences on Appeal*, 37 Col. L. Rev. 521, 539-540.

Nor is there any reason to suppose that petitioner was one of an organized gang of professional criminals. He was never indicted with others and the offenses which the transcripts filed by petitioner as exhibits describe, appear to have been committed by him alone. If investigation proved this to be the case, it also would have been a persuasive factor in mitigation. Michael and Wechsler, Criminal Law and Its Administration (1940), 22-23.

The practice of sentencing all fourth felony offenders to life imprisonment has proved unfair and ineffective. As a result of experience and criticism New York modified its statute so as to make the life sentence discretionary rather than mandatory. Michael and Wechsler, Criminal Law and Its Administration (1940), 984, n. 4. The Supreme Court of Pennsylvania has held that in imposing sentence under the statute in question "the circumstances of the crime" as well as the criminal record of the offender are to be taken into account. *Commonwealth ex rel. Foster* v. *Ashe*, 336 Pa. 238, 240. A judge to whose attention these considerations were called, together with the facts related

above, would certainly hesitate and probe deeper before concluding that petitioner should be imprisoned for life for the crime of breaking a window with intent to engage in petty thievery. The assistance of an attorney on this phase of the case was therefore of the utmost importance. Cf. Rubin, *The Public Defender*, 18 J. Crim. Law & Criminology, 347, 358.

(3) Although it is vain to speculate concerning petitioner's background, it is plain that there may have been a wealth of information concerning his character, habits and previous environment which ought to have been brought before the sentencing court. The evidence might have been accepted in the form of general testimony from relatives and friends. On the other hand there are many studies which indicate that the problem of recidivism may be approached more scientifically, and that with sufficient data a fairly reliable forecast of the defendant's future conduct can be made. See e.g. Sheldon and Eleanor Glueck, After-Conduct of Discharged Offenders (1946), 63-73. Such studies indicate that the likelihood of recidivism is to be gauged not only by the defendant's previous criminal record and penal experience but also by his industrial habits, economic responsibility, mental abnormalities, and the seriousness and frequency of previous crimes. Sheldon and Eleanor Glueck, Five Hundred Criminal Careers (1930), 281-282. While we cannot tell how far such a study of petitioner's background would have helped or injured his plea in mitigation, petitioner was entitled to the opportunity to have the considerations favorable to him developed and presented to the court.

(4) A successful appeal might have been taken from any adverse determination. Clause (d) of the Habitual Criminals Act provides for an appeal "not only as to alleged legal errors but also as to the justice thereof." (Appendix,

p. 34, *infra*.) The act itself recognizes the importance of counsel at this stage of a case for it provides that whenever the defendant is indigent, a reasonable counsel fee shall be paid by the commonwealth. In the instant case at least two potential grounds of appeal were available: first, the trial court erred in imposing a life sentence automatically without exercising the discretion vested in it by the Act; and, second, in view of the minor character of the offenses, the sentence was unjust. Petitioner lost his opportunity to appeal, not through indifference, but through ignorance and poverty. (See pp. 24-25 *supra*.)

The unfairness resulting from the lack of counsel could not be remedied under these circumstances by the intervention of the court. The considerations to be urged in petitioner's favor lay outside the record and required active investigation. In this kind of case the judge cannot effectively discharge the obligations of counsel. "He cannot investigate the facts, advise and direct the defense, or participate in those necessary conferences which sometimes partake of the inviolable character of the confessional" (*Powell* v. *Alabama*, 287 U. S. 45, 61). Compare *Betts* v. *Brady*, 316 U. S. 455, 471-473. In any event no such effort was made here. The record of the hearing bears out petitioner's allegation that he was called to answer the information "without being informed by the Court of the nature of the charge or your petitioner's reasons for being there, or being asked if he wanted an attorney * * *." Compare *Foster* v. *Illinois*, 332 U. S. 134. Later, when the court discussed the statute, the explanation was misleading (see p. 26, *supra*).

The averment last quoted also shows that there is no basis for a suggestion that petitioner waived counsel. "It is enough that a defendant charged with an offense of this character is incapable adequately of making his defense, that he is unable to get counsel, and that he does not intelli-

gently and understandingly waive counsel" (*Rice* v. *Olson*, 324 U. S. 786, 788-789). See also *Tomkins* v. *Missouri*, 323 U. S. 485; *De Meerleer* v. *Michigan*, 329 U. S. 663. Petitioner was manifestly incapable, for lack of education and intelligence, of making his own defense. He was confined in the penitentiary without funds, and therefore was unable to get counsel (R. 29, 35). The court did not inform him of his right to counsel and it is evident that he was not then aware of his constitutional right to such assistance. Consequently, there was no waiver.

III

The Habitual Criminals Act, as applied in this case, violates the Fourteenth Amendment.

The petition for habeas corpus challenges the sentence to life imprisonment on the ground that the Habitual Criminals Act, as applied in this case, violates the Fourteenth Amendment. The Act was first enacted on April 29, 1929. P. L. 854, Laws of 1929. One of the four convictions in view of which the life sentence was imposed, was for a crime committed in Maryland before the enactment of the Act (R. 88). Petitioner contends that the statute is unconstitutional because it is an *ex post facto* law (R. 36), subjected him to double jeopardy (R. 29, 36-37), punishes him for a crime committed outside the Commonwealth (R. 36) and unlawfully dispenses with indictment by a grand jury (R. 36).

These contentions have been carefully considered by this Court and others in decisions upholding the constitutionality of such statutes. *McDonald* v. *Massachusetts*, 180 U. S. 311; *Graham* v. *West Virginia*, 224 U. S. 616; *Carlesi* v. *New York*, 233 U. S. 51; *Levell* v. *Simpson*, 142 Kan. 892, appeal dismissed for want of a substantial Federal question 297 U. S. 695. See also 9 Ind. L. J. 534 and Annos. 58

A.L.R. 20, 82 A.L.R. 345, 116 A.L.R. 209, where additional cases are collected. We submit petitioner's contentions for the judgment of the Court with the request that it determine whether its prior decisions do not warrant reconsideration.

We wish to call special attention, however, to the allegation that petitioner has been sentenced three times for the same offense (R. 10, 29, 37, 95). On July 26, 1943, petitioner pleaded guilty to the charges of receiving stolen goods which were embraced within Indictments Nos. 251-262 inclusive, and was sentenced to imprisonment. At that time Indictments Nos. 1046 and 1047, to which he had pleaded not guilty, were awaiting disposition. The petition for *habeas corpus* alleges that both petitioner and his attorney understood that these charges were disposed of on July 26, 1943 together with Indictments Nos. 251-262 inclusive (R. 29). Although the docket entries recite the contrary, the certified transcript of the hearing held on July 26, 1943, supports the allegation for its caption refers to both sets of indictments and the testimony covered both sets of crimes. See Exhibit — filed in the office of the clerk in response to the answer to the petition for certiorari. Nevertheless, petitioner was tried on Indictments Nos. 461 and 462 on February 25, 1944, and sentenced to a long term of imprisonment. On November 27, 1944, he was once again brought into court on these indictments and the sentence of life imprisonment was imposed.

In prior cases it has been held that there is no violation of due process in proceeding against a fourth offender by a separate information filed after sentence for the last conviction has been imposed. *Graham* v. *West Virginia*, 224 U. S. 616; *Cross* v. *State*, 96 Fla. 768, 789; *People* v. *Gowasky*, 244 N. Y. 451; *People ex rel. Fernandez* v. *Kaiser*, 230 App. Div. 646, affirmed 256 N. Y. 581; certiorari denied 284 U. S. 631; American Law Institute, Code of Criminal Pro-

cedure (1930), § 403. Nevertheless, the petitioner urges that such a proceeding is fundamentally unfair, and the Court may wish to reconsider the question. The deep sense of injustice to which the statute gives rise is eloquently stated in petitioner's own appeals, first when he was sentenced (R. 95) and later to the court below.

Conclusion

The judgment of the Supreme Court of Pennsylvania should be reversed.

Respectfully submitted,

ARCHIBALD COX.
Counsel for Petitioner.

April 1948.

APPENDIX

Paragraphs of the Pennsylvania Habitual Criminals Act applicable to fourth offenders were first enacted on April 29, 1929 as P. L. 854. Its provisions were incorporated in the Penal Code of 1939, enacted June 24, 1939. P. L. 872, § 1108, 18 Purdon's Penna. Stat., Tit. 18, § 5108. The provisions are as follows:

"(a) Whoever after having been convicted within or without this Commonwealth of the crime, or attempt to commit the crime, of treason, murder, voluntary manslaughter, sodomy, buggery, burglary, entering with intent to steal, robbery, arson, mayhem, kidnapping, sale of narcotics, perjury, abortion, pandering, incest or any offense committed or attempted to be committed through the instrumentality of or with the aid of a deadly weapon or gunpowder or other explosive substance or corrosive fluid, may, upon conviction of any of such crimes for a second offense committed within five (5) years after the first offense, or subsequent offense committed within five (5) years after the prior offense, be sentenced to imprisonment for a term, the maximum of which shall not be more than twice the longest term prescribed upon a first conviction of the crime in question.

"(b) Whoever, after having been three (3) times convicted, within or without this Commonwealth, of crimes of the character set forth in clause (a) of this section, or of attempt to commit any such crimes, shall upon conviction of any such crimes for a fourth or subsequent offense, committed within five (5) years after the prior offense, be sentenced, in the discretion of the judge trying the case, to imprisonment in a state penitentiary for the term of his natural life.

"(c) In computing the period of time between convictions, as provided in clauses (a) and (b) of this section, any period of servitude by a person in a penal institution, within or without this Commonwealth, shall not be included in the computation of any of said five-year periods. It is

hereby declared that the intent of said clauses is that said five-year periods shall run only during the time any such person shall be at liberty.

"(d) If at any time within two (2) years, either after conviction or sentence, it shall appear that a person convicted of any of the crimes set forth in clause (a) of this section has previously been convicted of any such crimes three (3) or more times, it shall be the duty of the district attorney of the county in which the last conviction was had to file a complaint accusing the said person of such previous convictions, and to serve a copy of such information upon the defendant thirty (30) days before taking any further proceedings in court as hereinafter set forth. Thereupon the court in which the last conviction was had shall cause the said person, whether confined in prison, penitentiary or otherwise, to be brought before it, and shall inform him of the allegations contained in such complaint and of his right to be tried as to the truth thereof according to law, and shall require such offender to say whether he is the same person as charged in such complaint or not. If he says he is not the same person, or refuses to answer, or remains silent, his plea or the fact of his silence shall be entered on record, and a jury shall be empanelled to inquire whether the offender is the same person mentioned in the several records as set forth in such complaint. If the jury finds that he is the same person, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he is the same person, the court may sentence him to imprisonment for life as prescribed in clause (b) of this section, and shall vacate any previous sentence notwithstanding that the term of court in which the last sentence was imposed may have expired. Such sentence shall be reviewable on appeal by the Supreme or Superior Courts, not only as to alleged legal errors but also as to the justice thereof. Where any such defendant is indigent, the costs of appeal, together with reasonable counsel fee, shall be paid by the Commonwealth. Whenever it shall become known to any warden or prison, probation, parole or police officer, or other peace officer that any person charged with, or convicted of, cri[illegible] has been previously

convicted, within the meaning of this section, it shall become his duty forthwith to report the facts to the district attorney of the county.

"(e) A person need not be formally indicted and convicted as a previous offender in order to be sentenced under this section."

(5816)

FILE COPY
No. 541

Office - Supreme Court, U. S.
FILED
NOV 26 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1947.

~~58 Miscellaneous.~~

COMMONWEALTH OF PENNSYLVANIA ex rel.
FRANCIS JOSEPH GRYGER

v.

C. J. BURKE, WARDEN EASTERN STATE PENITENTIARY, PHILADELPHIA, PENNSYLVANIA.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

JOHN H. MAURER,
District Attorney,
666 City Hall,
Philadelphia 7, Pennsylvania,
Attorney for Respondent.

Martin & Lyle, 817 Walnut Bldg., Phila. 2, Pa.

INDEX

PAGE

Answer of John H. Maurer, District Attorney, to the Petition of Francis Joseph Gryger for Writ of Certiorari 1

Argument 8

CITATIONS

Barr v. State, 187 N. E. 259 (Ind. 1933) 11

Carlesi v. New York, 233 U. S. 51 12

Commonwealth v. Ferrone, 96 Conn. 160 11

Commonwealth ex rel. Foster v. Ashe, 336 Pa. 238 9

Commonwealth v. Sutton, 125 Pa. Super. Ct. 407 10

Commonwealth ex rel. Wall v. Smith, 345 Pa. 512 10

Laws of Pennsylvania:

Act of Assembly April 29, 1929, P. L. 854 1

Act of Assembly June 24, 1939, P. L. 872 §5108 1

Act of Assembly June 19, 1911, P. L. 1055 10

Act of Assembly June 22, 1931, P. L. 862 10

McDonald v. Mass., 180 U. S. 311 12

ANSWER OF JOHN H. MAURER, DISTRICT ATTORNEY, TO PETITION OF FRANCIS JOSEPH GRYGER FOR WRIT OF CERTIORARI.

The relator was proceeded against as a fourth offender after the last conviction which was a plea of guilty entered July 7, 1943 to eleven indictments charging burglary, and as the same was a fourth conviction, under the laws of Pennsylvania was sentenced to life imprisonment. The law of Pennsylvania sentencing a person to life imprisonment as a fourth offender was originally passed April 29, 1929, P. L. 854 and was re-enacted in the Penal Code of 1939 passed June 24, 1939, P. L. 872, §1108, 18 P. S. §5108, as follows:

"(a) Whoever after having been convicted within or without this Commonwealth of the crime, or attempt to commit the crime, of treason, murder, voluntary manslaughter, sodomy, buggery, burglary, entering with intent to steal, robbery, arson, mayhem, kidnapping, sale of narcotics, perjury, abortion, pandering, incest, or any offense committed or attempted to be committed through the instrumentality of or with the aid of a deadly weapon or gunpowder or other explosive substance or corrosive fluid, may, upon conviction of any of such crimes for a second offense committed within five (5) years after the first offense, or subsequent offense committed within five (5) years after the prior offense, be sentenced to imprisonment for a term, the maximum of which shall not be more than twice the longest term prescribed upon a first conviction of the crime in question.

"(b) Whoever, after having been three (3) times convicted, within or without this Commonwealth, of crimes of the character set forth in clause (a) of this section, or of attempt to commit any such crimes, shall,

upon conviction of any such crimes for a fourth or subsequent offense, committed within five (5) years after the prior offense, be sentenced, in the discretion of the judge trying the case, to imprisonment in a state penitentiary for the term of his natural life.

"(c) In computing the period of time between convictions, as provided in clauses (a) and (b) of this section, any period of servitude by a person in a penal institution, within or without this Commonwealth, shall not be included in the computation of any of said five-year periods. It is hereby declared that the intent of said clauses is that said five-year periods shall run only during the time any such person shall be at liberty.

"(d) If at any time within two (2) years, either after conviction or sentence, it shall appear that a person convicted of any of the crimes set forth in clause (a) of this section has previously been convicted of any such crimes three (3) or more times, it shall be the duty of the district attorney of the county in which the last conviction was had to file a complaint accusing the said person of such previous convictions, and to serve a copy of such information upon the defendant thirty (30) days before taking any further proceedings in court as hereinafter set forth. Thereupon the court in which the last conviction was had shall cause the said person, whether confined in prison penitentiary, or otherwise, to be brought before it, and shall inform him of the allegations contained in such complaint and of his right to be tried as to the truth thereof according to law, and shall require such offender to say whether he is the same person as charged in such complaint or not. If he says he is not the same person, or refuses to answer, or remains silent, his plea or the fact of his silence shall be entered on record, and a jury shall be empanelled to inquire whether the offender is

the same person mentioned in the several records as set forth in such complaint. If the jury finds that he is the same person, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he is the same person, the court may sentence him to imprisonment for life as prescribed in clause (b) of this section, and shall vacate any previous sentence notwithstanding that the term of court in which the last sentence was imposed may have expired. Such sentence shall be reviewable on appeal by the Supreme or Superior Courts, not only as to alleged legal errors but also as to the justice thereof. Where any such defendant is indigent, the costs of appeal, together with reasonable counsel fee, shall be paid by the Commonwealth. Whenever it shall become known to any warden, or prison, probation, parole or police officer, or other peace officer that any person charged with, or convicted of, crime has been previously convicted, within the meaning of this section, it shall become his duty forthwith to report the facts to the district attorney of the county.

"(e) A person need not be formally indicted and convicted as a previous offender in order to be sentenced under this section."

The two important things to create a fourth offender are:

(a) The commission of one of the enumerated crimes, and

(b) The commission of a new crime within five years after the prior offense. The five years * * * are calculated during the time the person is at liberty and does not include time in jail.

1. The relator was convicted of burglary on March 17, 1927 in Maryland and sentenced to one year in the House of Correction from March 17, 1929, and was discharged therefrom January 17, 1928.

2. He was convicted of burglary in Philadelphia County April 1929 and sentenced to the Huntingdon Reformatory, and discharged therefrom on September 20, 1930.

3. In November 1930, the relator plead guilty to robbery being armed with a weapon, and sentenced to not less than five nor more than ten years in the Eastern State Penitentiary from which he was discharged on parole May 28, 1936.

4. In April of 1937 he was indicted for burglary and receiving stolen goods, and plead guilty to receiving stolen goods, and was sentenced April 1937 to not less than eighteen months nor more than three years in Eastern State Penitentiary at the expiration of his unexpired parole sentence imposed in November of 1930, and was paroled from said institution April 29, 1943. Receiving stolen goods is not one of the crimes, but it prevented the running of the five year period.

5. In June of 1943 he was indicted and convicted of burglary and sentenced to not less than five nor more than ten years at the expiration of his unexpired parole time. Thereafter, in May 1944, an Information as required by the Act of Assembly, namely in the nature of an indictment setting forth the four prior convictions of burglary and robbery, was presented against the defendant, and on a hearing in open court he plead guilty to the same by stating that he was one and the same person who had been found guilty in each and every one of the alleged offenses although sometimes under different names or aliases. The testimony and proof of the convictions were presented to the court and after hearing he was sentenced to life imprisonment.

The relator then filed a petition with the Supreme Court of Pennsylvania as of Miscellaneous Docket No. 8, No. 301, asking for a writ of habeas corpus to discharge him on the

ground that he was improperly convicted as a fourth offender, which was dismissed October 1, 1945 with a short Per Curiam opinion as follows:

> "Even assuming for present purposes the verity of the petitioner's averments as well as the merit of his legal contention that the sentence imposed on him by the Court of Quarter Sessions of Philadelphia County on November 27, 1944, as a fourth offender, was in error, his petition for a writ of habeas corpus to relieve him from that sentence is premature. He is at present confined in the Eastern Penitentiary under prior sentences which are not attacked and which will not expire at the earliest until February 25, 1949. He is therefore now validly restrained of his liberty. Consequently his petition for habeas corpus must be denied. See *Commonwealth ex rel. Toliver v. Ashe, Warden*, 336 Pa. 206, 208, 8 A. 2d 541, cert. den., 311 U. S. 646; *Commonwealth ex rel. Lewis v. Ashe, Warden*, 335 Pa. 575, 576, 7 A. 2d 296, cert. den., 308 U. S. 596; also *Commonwealth ex rel. Sloan v. Ashe*, Warden, 133 Pa. Superior Ct. 32, 38, 1 A. 2d 788."

A similar petition was filed shortly thereafter in the Superior Court of Pennsylvania, Miscellaneous Docket No. 5, No. 398 which was dismissed January 17, 1946 following the opinion of our Supreme Court.

Thereafter, on March 21, 1947, the relator filed another petition for writ of habeas corpus in Supreme Court of Pennsylvania as of Miscellaneous Docket No. 8, No. 448, which was dismissed on April 14, 1947.

Thereafter, on May 10, 1947, the relator filed another petition for writ of habeas corpus in Supreme Court of Pennsylvania which on May 28, 1947 was dismissed by the Supreme Court on an order as set forth in the relator's petition, page 4.

Thereafter, in July of 1947, the relator filed a petition for writ of habeas corpus in United States District Court for

the Eastern District of Pennsylvania, which was dismissed on July 10, 1947 in order by Honorable Pierson M. Hall, as follows:

> "From the petition it appears that the Supreme Court of Pennsylvania denied a similar petition for Writ of Habeas Corpus on April 14, 1947. From the oral response to the order to show cause it appears that a petition for Writ of Habeas Corpus was denied by the Supreme Court of Pennsylvania on May 28, 1947. The petitioner contends that the latter did not raise the same issues as the instant one. Regardless of whether that is so or not, the time for appeal to the Supreme Court of the United States (28 U. S. C. 350) has not expired on the petition denied by the Supreme Court of Pennsylvania on April 14, 1947. The Petitioner has therefore not exhausted his state remedies by such appeal and hence under authority of Ex parte Hawke 321 U. S. 114 the Petition must be and is
>
> Denied 7/10/47
>
> Pierson M. Hall,
> J."

from which no appeal was taken.

At no time did the relator attempt to ask for counsel to take an appeal or to take an appeal to either the Superior or Supreme Court from his conviction as a fourth offender as provided by the Act:

> "If the jury finds that he is the same person, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he is the same person, the court may sentence him to imprisonment for life as prescribed in clause (b) of this section, and shall vacate any previous sentence notwithstanding that the term of court in which the last sentence was imposed may have expired. Such sentence shall be reviewable on appeal by the Supreme or Superior Courts, not only

as to alleged legal errors but also as to the justice thereof. Where any such defendant is indigent, the costs of appeal, together with reasonable counsel fee, shall be paid by the Commonwealth."

1. The relator contends that he was not properly tried as a fourth offender in that the paper making such allegation is called, in accordance with the words of the Act of Assembly, "an information" whereas in fact and in truth it is in the nature of an indictment; sets forth all the facts, and a copy must be served upon the defendant personally thirty days before further proceedings in court. The information alleging that Gryger was a fourth offender was served on the defendant on May 5, 1944 and he was not called before the Bar of the Court to be tried on the matter until November 28, 1944.

2. The relator was convicted of burglary under Bill No. 461 of June Sessions, 1943, and a sentence of five to ten years for burglary is a proper sentence.

3. On November 27, 1944, in open court, the information, charging the defendant as a fourth offender, was read in toto to the defendant. He was then asked whether he was the same person, and stated that he was. Thereupon there were offered in evidence the various convictions to show that he had committed each one of the felonies within five years of the time he was at liberty after each prior felony. The defendant then stated he did not understand why in the world Judge McDevitt when he gave him the last five to ten years sentence had not then sentenced him to life imprisonment. The Court then explained fully to him that the proceedings were taken according to law, that he was guilty, and sentenced him to life imprisonment.

JOHN H. MAURER,
District Attorney of Philadelphia County.

Commonwealth of Pennsylvania }
City and County of Philadelphia } ss.

John H. Maurer, being duly sworn according to law, deposes and says that he is District Attorney of Philadelphia County, and that the facts set forth in the foregoing answer are true and correct according to the best of his knowledge, information and belief.

JOHN H. MAURER.

Sworn to and subscribed before me this 13th day of November, A. D. 1947.

CHARLES B. WATTS,
(Seal) Notary Public.
My Commission Expires February 21, 1951.

ARGUMENT.

The fourth offender law of Pennsylvania was enacted by the Act of April 29, 1929, P. L. 854 which was re-enacted in the 1939 Criminal Code Act June 24, 1939, P. L. 872, Sec. 1108, 18 P. S. §5108.

The main complaint of the relator-appellant is that he was sentenced to life imprisonment as a fourth offender, and that such a sentence was under an ex post facto law because three of the convictions were prior to its passage. In that claim he is in error. The first offense of which he was guilty was prior to the passing of the Fourth Offender Law. The other offenses were afterward.

The reason for giving a person who is a fourth offender life imprisonment is because he refuses to be a good citizen, and continues to commit crimes. This relator always

committed a new crime within a year after his release on parole.

Increased punishment for second, third and fourth offenders is not new. It is not the creation of a new crime, but merely the provision of the Legislature that greater punishment may and should be given to habitual criminals. Such has been the law in Pennsylvania since the Act of March 31, 1860, Sec. 182, P. L. 382 for second offenders. Since 1929, one who has been convicted four times of certain designated felonies, or attempts to commit the same, may be sentenced to life imprisonment upon the facts being proved in an open hearing, and sentence imposed for the last felony revoked. Such a law is not ex post facto because it would have to be passed prior to the commission of the fourth felony, which was true in this case.

Sentence for crime is for a threefold purpose: EXEMPLARY, PUNITIVE and CORRECTIVE. One not impressed by penal servitude in any of the three ways, but who almost immediately upon his release commits another felony, must be classed as an habitual criminal against whom society is entitled to be protected.

Our Act of 1929 provides that the crimes must be committed within five years after prisoner has been released, so that the Legislature recognized that it was dealing solely with habitual criminals and not with those who were making an honest attempt to rehabilitate themselves, but had fallen by the wayside.

Commonwealth ex rel. Foster v. Ashe, 336 Pa. 238.

The relator was sentenced in Erie County on May 19, 1930 for a term of three to six years. On April 29, 1932 an information was filed by the District Attorney of that county enumerating a long list of prior crimes of which relator was convicted. On October 11, 1932, the former sentence was revoked and the relator was sentenced to imprisonment for life in accordance with the Act of 1929. The relator there claimed that the previous crimes set forth in

the information had been committed prior to the Act of 1929, had been committed outside of the State and that they were within the knowledge of the sentencing judge who sentenced him in 1930 to three to six years. They were all overruled. The Court said as follows, page 240:

> "All of these objections overlook the fact that the statute provides merely for the punishment of a crime, committed within the State and after the passage of the Act, by making the sentence greater if the defendant had committed previous offenses. It is not the previous crimes upon which the defendant is again indicted, tried or sentenced, but they are taken into consideration only in order to determine the punishment to be imposed for the crime then under consideration, it being a well known principle of penology that an habitual criminal should receive a more severe sentence than a first offender."

Our appellate courts have been very strict in the interpretation of the Fourth Offender Act.

Commonwealth v. Sutton, 125 Super. Ct. 407.

It was there held that the fourth offense must be an offense committed after the third conviction. If a man commits ten felonies and has not been tried and convicted for any one of them, he is only a first offender, and cannot be considered a second, third or fourth offender under our law.

A somewhat similar situation arose in reference to the Act of June 19, 1911, P. L. 1055 as amended June 22, 1931, P. L. 862. See *Commonwealth ex rel. Wall v. Smith,* 345 Pa. 512.

Wall claimed that he was sentenced in 1930, and after release from jail and commission of another crime, he could not be compelled to serve all of his back time without commutation as provided in the amendment, but that the ser-

vice of back time was under the original Act of 1911. The Court said, page 515:

> "Even if there had been no such act prior to 1931, this relator could be lawfully imprisoned as a parole violator under the later act, because by the crime he committed while on parole in 1937, he subjected himself to the penalties then in force, which were imprisonment according to the sentence imposed for the 1937 crime, and recommitment to the penitentiary for breach of the conditions on which he had been released on parole."

Many decisions in the U. S. Supreme Court and other Federal and State Courts have uniformly held that such laws are not ex post facto.

Barr v. State, 187 N. E. 259 (Ind. 1933).

This case caused the writing of an article in the *Indiana Law Journal Vol. 9*, p. 534, which most fully analyses the habitual criminal statutes.

In the case of Barr v. State supra, the defendant was indicted in one bill for the substantive crime and also as a prior convict. In a joint trial he was convicted on both charges and sentenced as an habitual criminal. The article concludes that such a joint indictment and trial are proper.

However, in *Commonwealth v. Ferrone*, 96 Conn. 160, an opposite view is taken.

The indictment may contain both the substantive crime and the prior conviction. In such a case the prisoner must be arraigned, not in the presence of the jury, on the whole indictment. The jury shall then try on the substantive crime, without being informed of the prior conviction. If convicted, then the jury shall try as to the prior conviction.

In Pennsylvania, the defendant must be convicted of the substantive crime. After conviction, a new proceeding is brought charging him as a fourth offender. Upon that fact

being determined either upon confession,—as here—,or on conviction by a jury, the sentence imposed for the fourth conviction is revoked and the offender sentenced to life imprisonment.

The right to give a more severe sentence to habitual criminals has been sustained by your Honorable Court.

McDonald v. Mass., 180 U. S. 311.

The Court said:

> "The fundamental mistake of the plaintiff in error is his assumption that the judgment below imposes an additional punishment on crimes for which he had already been convicted and punished in Massachusetts and in New Hampshire.
>
> "But it does no such thing. The statute under which it was rendered is aimed at habitual criminals; and simply imposes a heavy penalty upon conviction of a felony committed in Massachusetts since its passage, by one who had been twice convicted and imprisoned for crime for not less than three years, in this, or in another state, or once in each. The punishment is for the new crime only, but is the heavier if he is an habitual criminal."

Carlesi v. New York, 233 U. S. 51.

This case involved the question of an additional sentence because the defendant was a second offender. Following the case of McDonald v. Mass., supra, it was held that such a statute is not ex post facto as it does not impose a punishment for past crimes, but only for future crimes.

It is, therefore, clear that the fourth offender Acts are not ex post facto, that the habitual offender is not punished for his past offenses but is punished for his last offense, the punishment for which is increased because of the fact that he is an habitual criminal.

This relator's prior punishments made no impression upon him. He made no attempt to rehabilitate himself. Within

a year, and latterly a couple of months, after release he immediately committed another crime. He confessed he was a fourth offender when arraigned and does not now deny it. He was properly sentenced under the Fourth Offender Act of Pennsylvania.

We pray that the petition for certiorari be dismissed.

Respectfully submitted,

JOHN H. MAURER,
District Attorney.

FILE COPY

Supreme Court of the United States

October Term, 1947.

No. 541.

FRANCIS JOSEPH GRYGER,
Petitioner,

vs.

C. J. BURKE, Warden, Eastern State Penitentiary,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

Brief for the Respondent

FRANKLIN E. BARR,
First Assistant District Attorney,
JOHN H. MAURER,
District Attorney,
666 City Hall,
Philadelphia 7, Pa.,
Attorneys for Respondent.

Martin & Lyle, 817 Weightman Bldg., Phila. 2, Pa.

INDEX

	PAGE
Respondent's Statement	1
Summary of Argument	4
Argument	5
I. Habeas Corpus	5
II. Fourth Offender Act	6
III. Due Process of Law	10
IV. Ex Post Facto	12
V. Imposition of Life Sentence	13
Conclusion	14

CITATIONS

Cases:

Betts vs. Brady, 316 U. S. 455	10
Commonwealth ex rel. Billings vs. Ashe, 144 Pa. Super. 209	11
Commonwealth ex rel. Cook vs. Ashe, 144 Pa. Super. 1	11
Commonwealth ex rel. Curtis vs. Ashe, 139 Pa. Super. 417	11
Commonwealth ex rel. Fitts vs. Smith, 158 Pa. Super. 105	11
Commonwealth ex rel. McGlinn vs. Smith, 344 Pa. 41	11
Commonwealth ex rel. Shaw vs. Smith, 147 Pa. Super. 423	11

PAGE

Commonwealth ex rel. Uveges vs. Smith, 161 Pa. Super. 58, 61, 62 11
Commonwealth ex rel. Withers vs. Ashe, 350 Pa. 493 11
Cross vs. State, 96 Fla. 768, 781 13
Graham vs. West Virginia, 224 U. S. 616 12
McDonald vs. Mass., 180 U. S. 311 13
Moore vs. Missouri, 159 U. S. 673 13
People ex rel. Fernandez vs. Kaiser, 230 App. Div. 646, Affirmed 256 N. Y. 581. Certiorari denied 284 U. S. 631 13
People vs. Gowasky, 244 N. Y. 451 13

Laws of Pennsylvania:

Act of June 19, 1911 P. L. 1055, Sec. 10 as amended June 22, 1931 P. L. 862—61 P. S. 305 9
Act of March 22, 1907 P. L. 31—19 P. S. 784 11
Act of June 24, 1939 P. L. 872—Sec. 1108—18 P. S. 5108 6

Constitution of United States:

Art. VI. of the Amendments 10
Art. XIV. of the Amendments 10

Constitution of Pennsylvania:

Art. I. Section 9 10

SUPREME COURT OF THE UNITED STATES.

October Term, 1947.

No. 541.

FRANCIS JOSEPH GRYGER,

Petitioner,

vs.

C. J. BURKE, Warden, Eastern State Penitentiary,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

BRIEF FOR THE RESPONDENT.

RESPONDENT'S STATEMENT OF THE CASE.

The petitioner has since 1927 been arrested eight times, and has either plead guilty or been convicted of every offense or groups of offenses. He was seventeen years of age in 1928 which now makes him thirty-seven. During that time he has spent 13 years and 9 months in jail between March 1927 to July 1943.

Statement of the Case

In 1943 he was arrested and plead guilty to twelve receiving stolen goods cases, and was tried and convicted of one burglary charge. While in the Eastern State Penitentiary he attempted to escape. On January 23, 1944 he plead guilty to prison breach and was given an extra one to two years.

Upon an Information filed and served on him on May 5, 1944, which came on for hearing in court on November 27, 1944, he stated that he was a fourth offender as charged in the Information.

The offenses which made him a fourth offender are as follows:

Arrest	Date of Trial	Charge	Place	Plea or Conviction	Bill #
	Mch 17, 1927	Burglary	Mary-land	Plead Guilty	
	Sentence: Maryland House of Correction for 1 year. Discharged Jan. 17, 1928.				
4-22-29	Apr. 23, 1929	Burglary	Phila., Pa.	Verdict Guilty	#1107
	Sentence: Huntingdon Reformatory Discharged September 20, 1930.				
11-26-30	Nov. 28, 1930	Armed Robbery,	Phila., Pa.	Plead Guilty	#1670
	Sentence: Eastern Penitentiary not less than five nor more than 10 years. Discharged May 28, 1936.				
4-26-37	Apr. 28, 1937	(Burglary) & R. S. G.	Phila.	Plead Guilty	R. S. G. #1046
	Sentence: Eastern Penitentiary not less than 1½ nor more than 3 yrs, at expiration of unexpired parole sentence imposed Nov. 28, 1930. Discharged April 29, 1943.				
6-23-43	Feb. 25, 1944	Burglary	Phila., Pa.	Verdict Guilty	#461
	Crime committed June 20, 1943.				

Statement of the Case

Sentence: Eastern Penitentiary not less than 5 nor more than 10 yrs. to be computed after expiration of present sentence.

Still confined.

He claims that on certain bills on which he was indicted as of July Sessions 1943, charging burglary and receiving stolen goods, that he was only guilty of receiving stolen goods. These bills are as follows:

No.	Place of Burglary	Date of Burglary	
251	6249 Mulberry St.	5-31-43	
252	6837 Horrocks St.	5-19-43	
253	6312 Jackson St.	5-1-43	
254	6301 Jackson St.	5-12-43	
255	6837 Kindred St.	5-15-43	Plead Guilty to Receiving Stolen Goods on all twelve bills.
256	3842 "K" St.	5-23-43	
257	430 W. Airdrie St.	5-24-43	
258	4405 Cottman St.	6-1-43	
259	951 Arrott St.	5-15-43	
260	2123 E. Auburn St.	5-19-43	
261	4048 Roosevelt Blvd.	5-5-43	
262	1641 E. Luzerne St.	6-1-43	

Sentence 251—252

July 26, 1943—2½ to 5 years E. P. 251

July 26, 1943—2½ to 5 years E. P. 252 after sentence on 251

These bills were found true by the Grand Jury on July 21, 1943 and on July 26, 1943 he plead guilty to the second count —receiving stolen goods and was sentenced the same day to two sentences of 2½ to 5 years to run consecutively on Bills 251 and 252 to be computed after the unexpired sentence on Bill 1046 of April Sessions 1937 which sentence of 18 months to 3 years imposed April 28, 1937 was to begin at the expiration of the unexpired parole on sentence on Bill

1679 of November Sessions 1930 on which the defendant was sentenced on November 28, 1930 to not less than five nor more than ten years.

The crime of receiving stolen goods is not one of the crimes which would cause a person to be a fourth offender, but the time spent in jail on such sentences, tolls the running of the five year period.

After the conviction of the petitioner on February 25, 1944 on Bill 461 of June Sessions 1943 for burglary, he became a fourth offender, and thereafter the Information that he was a fourth offender was filed and served.

SUMMARY OF ARGUMENT.

I.

Habeas Corpus is the proper remedy to test the legality of a commitment.

II.

The Fourth Offender Act of Pennsylvania provides for life imprisonment after the fourth conviction of named crimes:—all heinous. Many felonies do subject the convict to be punished as a fourth offender with a life sentence.

Each conviction must be had within five years after release from prison for the prior conviction.

After four such convictions, the District Attorney must file an information setting fourth the four convictions, serve a copy on the convict 30 days prior to taking further proceedings in court.

In court, if the convict admits his identity as the fourth

offender or is found to be a fourth offender by a jury, after denial or silence, his last sentence shall be revoked and he shall be sentenced to life imprisonment.

III.

Due Process of law does not require that counsel be assigned. When the convict admits his identity as a fourth offender there is no need to appoint counsel.

IV.

Habitual Criminal laws such as the Fourth Offender Act of Pennsylvania are not ex post facto laws. They do not punish again former crimes, but for the last crime give a more severe penalty because of prior conviction.

V.

The sentence imposed on the last conviction is revoked and the life penalty imposed. Convictions prior to the last conviction are still in force. R. 13.

ARGUMENT.

I.

It is admitted that Habeas Corpus is the proper remedy to test the legality of a commitment, however our contention is, and always has been, that the petitioner is properly sentenced for life as a result of the conviction of three burglaries

and one robbery; each new conviction happening shortly after he was paroled on a former conviction.

II.

In Pennsylvania, a person to be guilty as a fourth offender does not have to be guilty only of committing a felony as is the case in most States. The crimes of which one has to be convicted in Pennsylvania are serious, namely:

> "* * * treason, murder, voluntary manslaughter, sodomy, buggery, burglary, entering with intent to steal, robbery, arson, mayhem, kidnapping, sale of narcotics, perjury, abortion, pandering, incest, or any offense committed or attempted to be committed through the instrumentality of or with the aid of a deadly weapon or gunpowder or other explosive substance or corrosive fluid * * *."
>
> Act of June 24, 1939, §1108, P. L. 872,—18 P. S. §5108.

Therefore, receiving stolen goods, which is a felony in Pennsylvania, is not an offense which can be counted as one of the crimes which would make him a fourth offender.

There is this provision of the Fourth Offender Act of the Commonwealth of Pennsylvania:

> "* * * it shall be the duty of the district attorney of the county in which the last conviction was had to file a complaint accusing the said person of such previous convictions and to serve a copy of such information upon the defendant thirty (30) days before taking any further proceedings in court as hereinafter set forth. * * *"
>
> Act of June 24, 1939, §1108, P. L. 872,—18 P. S. §5108.

which to us seems to be most fair to a convict. It means that there cannot be tacked on to the indictment for the fourth crime for which he is about to be tried any reference to prior convictions. Only after he has been four times convicted of the named crimes is it then proper, to move, upon proof that he is a fourth offender, that his last sentence be revoked, and that he be sentenced to life imprisonment. Giving to the convict thirty days time after the filing of such an Information before it may be heard in court, gives him ample time to obtain counsel if he so desires. In this case the petitioner was served with the Information on May 5, 1944 and was not brought before the Court until November 27, 1944 which gave him more than six months to obtain counsel. Also, he was not without the knowledge that he could obtain counsel because his fourth conviction was on Bills 461 for burglary in premises of Raymond Wilde, and 462 for aggravated assault and battery on Harry Hass, not in the premises of Raymond Wilde. He plead not guilty to those bills of indictment and was represented by counsel, Philip Werner, Esquire. R. 61.

How the Petitioner Plead.

In Maryland in 1927, the petitioner plead guilty.

In Philadelphia in 1929 he plead not guilty and was convicted.

In Philadelphia in 1930 he plead guilty.

In Philadelphia in 1937, although he was indicted for burglary and receiving stolen goods, he plead guilty only to receiving stolen goods. Had counsel.

In Philadelphia in 1943, to twelve bills of indictment charging burglary and receiving stolen goods, he plead guilty only to receiving stolen goods.

In Philadelphia, in 1943, having plead not guilty to burglary and receiving stolen goods, he was convicted of burglary and receiving stolen goods. Had counsel.

Argument

The petitioner states that at the time he was sentenced on Bills Nos. 251-262 inclusive of July Sessions 1943 to which he had on that day plead guilty, he was tried on Bills Nos. 461 and 462 June Sessions 1943 to which he had on June 28, 1943 plead not guilty. This is, of course, not true. No jury was empaneled and he was not tried. These two bills of indictment were continued. There could not have been a fair trial on that day because a panel of jurors is drawn for each criminal court room and sits in the court room during all proceedings of pleas or trial. To have called a jury of twelve from that panel and to have tried the petitioner on bills 461 and 462 after he had plead guilty to twelve bills charging receiving stolen goods would be unjust. It may not be done and was not done. These cases were continued. He was tried a few months later before an entirely new panel who knew nothing about his prior record.

The petitioner sets forth in the petition for habeas corpus R. 29 that at the time he was sentenced on "Bills 251-252 inclusive, July 1933 he was also sentenced on Bill 461 as the notes of testimony taken at this hearing, pages 1 to 13 inclusive, clearly show." We can find no substantiation of this claim whatsoever. The records of the Clerk of Court do not disclose that any notes of testimony were taken and transcribed and filed of record. Notes of testimony do not have to be taken in criminal cases, and in pleas of guilty generally are not.

The petitioner states as another fact that immediately after the petitioner was sentenced he started to appeal, but the prison authorities refused to release funds for the purpose. R. 30. This is a bald statement, but a careful reading of the record shows that this statement is error. The Board of Trustees on December 20, 1945 wrote to the District Attorney in reference to releasing funds from the Prisoner's Welfare Fund for the use of this petitioner. This letter was answered by the District Attorney the next day December 21, 1945 which was one year after he was sentenced to life imprisonment.

Argument

Our Act provides that a sentence of a Fourth offender is reviewable by appeal to Supreme or Superior Court and makes provision for employment of counsel. An appeal must be taken, however, in 45 days and no such appeal was taken. There is no date given as to when the petitioner first tried to take an appeal or get the matter before the upper Court except the fact that in September of 1945, ten months after he was sentenced to life imprisonment, he filed a petition for writ of habeas corpus in the Supreme Court of Pennsylvania, he thereafter filed one with the Superior Court of Pennsylvania; and thereafter filed another one in the Supreme Court of Pennsylvania, and a fourth, in the United States District Court for the Eastern District of Pennsylvania. In all four petitions he reiterates the same allegations. In none does he deny that he is the person convicted of the four crimes set forth in the information which causes him to be a fourth offender.

The argument is made (Brief, p. 31) that on July 26, 1943 when the petitioner plead guilty to receiving stolen goods on bills of indictment Nos. 251 to 262, inclusive, of July Sessions, 1943, and was sentenced, that he was then awaiting sentence on indictments Nos. 1046 and 1047 of April Sessions, 1937, to which he had plead not guilty. This is untrue (R. 56). First, he plead guilty to receiving stolen goods, on bills 1046 and 1047 and was sentenced on April 28, 1937 to eighteen months to three years more than six (6) years before indictments Nos. 251-262, inclusive, were found July 21, 1943 by the Grand Jury. He did have one and one-half years back parole time to serve without commutation because of his conviction (plea) on bills 251 to 262, inclusive. That became automatic, and is not a new sentence. It is the balance of his maximum.

Act of June 19, 1911, P. L. 1055, Sec. 10 as amended June 22, 1931, P. L. 862—61 P. S. 305.

His only contention is that he did not have counsel.

III.

Due Process of Law.

Article I, Section 9 of the Constitution of Pennsylvania provides:

"Rights of accused in criminal prosecutions.

"In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, * * *"

Article VI of the Amendments of the Constitution of the United States provides:

"Rights of accused persons in criminal prosecutions.

"In all criminal prosecutions, the accused * * * shall have * * * the Assistance of Counsel for his defence."

Article XIV of the Amendments of the Constitution of the United States provides:

"Section 1. Citizenship defined. Privileges of citizens.

"* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *"

Article VI of the Amendments to the Constitution of the United States applies only to trials in federal courts.

Betts v. Brady, 316 U. S. 455, 461.

That the "Accused should have a right to be heard by himself and by his counsel was adopted by Pa. in 1776 * * *"

Betts v. Brady, supra, 465.

In most states the people, their representatives and courts, do not consider the appointment of counsel a fundamental right essential to a fair trial.

Betts v. Brady, supra, 471.

Argument

In Pennsylvania, by Act of Legislature, in murder cases—the only instance carrying the death penalty—counsel must be appointed.

Act March 22, 1907, P. L. 31—19 P. S. 784.

In crimes other than murder, accused has a right to be heard by counsel, but it has never been the law that he must be supplied with counsel.

Commonwealth ex rel. McGlinn v. Smith, 344 Pa. 41.

McGlinn plead not guilty to charge of armed robbery.

Affirmed *Commonwealth ex rel. Withers v. Ashe*, 350 Pa. 493, 495;
Commonwealth ex rel. Fitts v. Smith, 158 Pa. Super. 105.

It has been constantly held that when a defendant pleads guilty there is no need for the court to appoint counsel to represent him.

Com. ex rel. Curtis v. Ashe, 139 Pa. Super. 417;
Com. ex rel. Cook v. Ashe, 144 Pa. Super. 1;
Com. ex rel. Billings v. Ashe, 144 Pa. Super. 209, 211;
Com. ex rel. Shaw v. Smith, 147 Pa. Super. 423;
Com. ex rel. Uveges v. Ashe, 161 Pa. Super. 58, 61, 62.

The petitioner had six months in which to get counsel. He had counsel when he was tried on Bills 461 and 462 of June Sessions 1943 namely, Philip Werner, Esquire. (R. 61.) He had counsel when he was tried on Bill 1046, April Sessions, 1937,—Thomas E. Cogan, Esquire, Defender, of Philadelphia Voluntary Defender Association. He could easily have gotten in communication with either of these

men or any other counsel he desired. In these six months he did not get counsel. He said he was a fourth offender and he does not now deny it.

IV.

Ex Post Facto.

The fourth offender acts are not ex post facto because they punish none but future crimes, and affect alike all persons similarly situated. It therefore makes no difference whether a crime is committed prior to the passage of a fourth offender act or after. The person is being punished because of the last act which makes him a fourth offender.

Graham v. West Virginia, 224 U. S. 616, decides that when a convict has been twice sent to the penitentiary there may be an information filed in the County where the penitentiary is located (not where he is tried) setting forth that he is a second offender and that he shall be confined to the penitentiary for life. The trial in a county other than that in which he was originally tried, is proper. It has long been the recognized policy in England and this country to inflict severer punishment upon old offenders. "They are not punished the second time for the earlier offense, but the repetition of criminal conduct aggravates their guilt and justifies heavier penalties when they are again convicted." p. 626:

> "Nor is there any reason why such a proceeding should not be prosecuted upon an information presented by a competent public officer on his oath of his office. There is no occasion for an indictment. To repeat, the inquiry is not into the commission of an offense; as to this, indictment has already been found and the accused convicted. There remains simply the question as to the fact of previous conviction. And it cannot be

contended, that in proceeding by information instead of by indictment there is any violation of the requirement of due process of law. Hurtado v. California, 110 U. S. 516; Brown v. New Jersey, 175 U. S. 172, 175; Maxwell v. Dow, 176 U. S. 581, 584."

Moore v. Missouri, 159 U. S. 673;
McDonald v. Massachusetts, 180 U. S. 311;
People v. Gowasky, 244 N. Y. 451;
People ex rel. Fernandez v. Kaiser, 230 App. Div. 646. Affirmed 256 N. Y. 581. Certiorari denied 284 U. S. 631;
Cross v. State, 96 Fla. 768, 781.

V.

Imposition of Life Sentence.

The Fourth Offender Act provides:

"* * * and shall vacate any previous sentence notwithstanding that the term of court in which the last sentence was imposed may have expired."

This undoubtedly refers to vacating the last sentence only. This leave the sentence on Bill 1046 of April Sessions, 1937, sentences on Bills 251 and 252 of July Sessions 1943, and a sentence for prison breach of one to two years, to be served prior to beginning the sentence of life imprisonment on Bill 461 of June Sessions 1943. These three prior sentences having a minimum totaling seven and one-half (7½) years will not expire until January 26, 1951.

CONCLUSION.

The argument is made that petitioner is a petty thief. This argument is surprising, to say the least. If burglary is a petty crime, it is new to us. The petitioner was indicted on bills Nos. 251 to 262 charged with burglary and receiving stolen goods. There are no notes of testimony, but twelve houses were broken into and goods stolen. Those burglaries all happened between May 1, 1943 and June 1, 1943 (a period of a month). The petitioner plead guilty to those indictments, and that plea was accepted by the court because the penalty which could have been meted out to him on the plea of receiving stolen goods was more than the court did impose, or would have imposed, had he plead guilty to the burglaries.

The petitioner plead guilty to receiving the goods stolen from those twelve homes. Who burglarized those homes? Well, we do not know. At least the petitioner knows and, perhaps, he was the burglar. He undoubtedly knows the difference between the penalties for burglary and receiving stolen goods. If he had a chance to avoid the penalty for burglary, he took it.

The "cleverness" of the criminal in his war against society is shown by the history of this petitioner from 1927 to 1943. His petitions for habeas corpus quote the law from Corpus Juris Secundum, the decisions of the United States, Pennsylvania and Illinois.

The petitioner is a fourth offender under the laws of the Commonwealth of Pennsylvania. He has committed many crimes. He has shown no tendency to reform. On the contrary, he was no more than out of jail, even on parole, when he went back to his life of crime. He is a fourth offender. He admits that he is a fourth offender, and under the laws of Pennsylvania, having admitted his guilt, there was no need to assign or appoint counsel for him. He has, as habitual criminals always do, filed a number of petitions

for Habeas Corpus. In addition to the petition filed May 15, 1947 he filed a petition with the Supreme Court of Pennsylvania in September 1945. He filed a similar petition in the Superior Court of Pennsylvania in December 1945. He filed a similar petition with the Supreme Court of Pennsylvania March 21, 1947. He filed a similar petition with the United States District Court for the Eastern District of Pennsylvania; all of which were dismissed.

This also should be dismissed.

Respectfully submitted,

FRANKLIN E. BARR,
Assistant District Attorney,
JOHN H. MAURER,
District Attorney,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES

No. 541.—October Term, 1947.

Francis Joseph Gryger, Petitioner, *v.* C. J. Burke, Warden, Eastern State Penitentiary.	On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

[June 14, 1948.]

Mr. Justice Jackson delivered the opinion of the Court.

The Commonwealth of Pennsylvania holds the petitioner prisoner under a life sentence as an habitual criminal. His claim here, protesting denial by the State Supreme Court of his petition for a writ of *habeas corpus*, is that the Federal Constitution requires Pennsylvania to release him on due process of law grounds because (1) he was sentenced as a life offender without counsel or offer of counsel; (2) one of the convictions on which the sentence is based occurred before the enactment of the Pennsylvania Habitual Criminal Act [1] and the statute is therefore unconstitutionally retroactive and *ex post facto*; and (3) sentencing under this Act unconstitutionally subjects him to double jeopardy.

At the outset, we face the suggestion that the case cannot properly be decided on the merits by this Court because, as a matter of state law, the attack on the life sentence may be premature since petitioner would be validly restrained on prior sentences not expiring until at least February 1949, even if the life sentence were to be invalidated. Some members of the Court prefer to affirm the judgment on that ground. However, since

[1] § 1108 of the Penal Code of 1939, 18 Pa. Stat. Ann. § 5108.

the state law question is not free from difficulty, the issue was not fully litigated in this Court, and since, on the merits,[2] the same conclusion is reached, we dispose of the case in that manner.

Beginning in 1927, at the age of seventeen, this petitioner has been arrested eight times for crimes of violence, followed in each instance by plea of guilty or by conviction. Respondent states, and petitioner does not deny, that of the last 20 years of his life, over 13 years have been spent in jail. A schedule of his pleas or convictions and pertinent data is appended, those in italics being the four on the basis of which an information was filed charging him to be a fourth offender. Brought into court on that limited charge, he acknowledged his identity as the convict in each of the previous cases and he was given a life sentence pursuant to the Act. He was without counsel and it is said that he was neither advised of his right to obtain counsel nor was counsel offered to him.[3]

It rather overstrains our credulity to believe that one who had been a defendant eight times and for whom counsel had twice waged defenses, albeit unsuccessful ones, did not know of his right to engage counsel. No request to do so appears. The only question of fact before the court on the fourth offender charge was whether he was

[2] Respondent contested the case below and in this Court on the merits. We assume that the Supreme Court of Pennsylvania passed on petitioner's allegations of deprivation of federal constitutional rights and that those issues are therefore open here. *Herndon* v. *Lowry*, 301 U. S. 242, 247.

[3] The Supreme Court of Pennsylvania has frequently held that the state constitutional provision according defendants the right to be heard by counsel does not require appointment of counsel in non-capital cases. See, for example, *Commonwealth ex rel. McGlinn* v. *Smith*, 344 Pa. 41; *Commonwealth ex rel. Withers* v. *Ashe*, 350 Pa. 493. See also *Betts* v. *Brady*, 316 U. S. 455, 465. The Pennsylvania statutes require only that destitute defendants accused of murder shall be assigned counsel. Act of March 22, 1907, 19 Pa. Stat. Ann. § 784.

the same person who was convicted in the four cases. This he then admitted and does not now deny. The only other question was sentence, and it does not appear that any information helpful to petitioner was unknown to the court.

It is said that the sentencing judge prejudiced the defendant by a mistake in construing the Pennsylvania Habitual Criminal Act in that he regarded as mandatory a sentence which is discretionary. It is neither clear that the sentencing court so construed the statute, nor if he did that we are empowered to pronounce it an error of Pennsylvania law. It is clear that the trial court, in view of defendant's long criminal record, considered he had a duty to impose the life sentence and referred to it as one "required by the Act." But there is nothing to indicate that he felt constrained to impose the penalty except as the facts before him warranted it. And it in any event is for the Pennsylvania courts to say under its law what duty or discretion the court may have had. Nothing in the record impeaches the fairness and temperateness with which the trial judge approached his task. His action has been affirmed by the highest court of the Commonwealth. We are not at liberty to conjecture that the trial court acted under an interpretation of the state law different from that which we might adopt and then set up our own interpretation as a basis for declaring that due process has been denied. We cannot treat a mere error of state law, if one occurred, as a denial of due process; otherwise, every erroneous decision by a state court on state law would come here as a federal constitutional question.

We have just considered at length the obligation of the States to provide counsel to defendants who plead guilty to non-capital offenses. *Bute* v. *Illinois*, 333 U. S. 640. Notwithstanding the resourceful argument of assigned counsel in this Court, we think that precedent settles the

issue here, that no exceptional circumstances are present and that, under the circumstances disclosed by the record before us, the State's failure to provide counsel for this petitioner on his plea to the fourth offender charge did not render his conviction and sentence invalid.

Nor do we think the fact that one of the convictions that entered into the calculations by which petitioner became a fourth offender occurred before the Act was passed, makes the Act invalidly retroactive or subjects the petitioner to double jeopardy. The sentence as a fourth offender or habitual criminal is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes. It is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one. Cf. *Moore* v. *Missouri*, 159 U. S. 673; *McDonald* v. *Massachusetts*, 180 U. S. 311; *Graham* v. *West Virginia*, 224 U. S. 616; *Carlesi* v. *New York*, 233 U. S. 51; *Pennsylvania ex rel. Sullivan* v. *Ashe*, 302 U. S. 51.

The judgment is

Affirmed.

Table of Pleas and Convictions.

Date	Charge	Plea	Sentence
1927	*Burglary*	*Guilty*	*1 year.*
1928	Assault and battery; carrying concealed deadly weapon.	Guilty	1 year.
1929	*Burglary; breaking and entering with intent to commit a felony.*	*Not guilty*	*Committed to Reformatory indefinitely.*
1930	*Armed robbery, armed assault, entering with intent to rob.*	*Guilty*	*5 to 10 years.*
1937	Burglary, carrying concealed deadly weapon.	Guilty of receiving stolen goods, and carrying concealed deadly weapon.	1½ to 3 years.
1943	Burglary, receiving stolen goods—12 offenses each.	Guilty of receiving stolen goods.	5 to 10 years.
1944	*Burglary*	*Not guilty*	*5 to 10 years.*
1944	Aggravated assault and battery.	Not guilty	Suspended.

SUPREME COURT OF THE UNITED STATES

No. 541.—October Term, 1947.

Francis Joseph Gryger, Petitioner, v. C. J. Burke, Warden, Eastern State Penitentiary.	On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

[June 14, 1948.]

Mr. Justice Rutledge, with whom Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy join, dissenting.

Even upon the narrow view to which a majority of this Court adhere concerning the scope of the right to counsel in criminal cases, as guaranteed by the Fourteenth Amendment's requirement of due process of law, I cannot square the decision in this case with that made in *Townsend* v. *Burke*, No. 542, decided today.

The opinion in that case declares that "the disadvantage from absence of counsel, when aggravated by circumstances showing that it resulted in the prisoner actually being taken advantage of, or prejudiced, does make out a case of violation of due process." In this view the Court finds that Townsend was prejudiced by the trial court's action in sentencing him on the basis either of misinformation submitted to it concerning his prior criminal record or by its misreading of the record and carelessness in that respect. On the same basis Gryger's sentence was invalid, although the Court finds no such exceptional circumstances here inducing prejudice as it finds in Townsend's case.

The record, in my judgment, does reveal such a circumstance, one working to induce prejudice at exactly the same point as with Townsend, namely, upon the critical question of sentence. So far as the record reveals, Gryger was sentenced to life imprisonment by a court working under the misconception that a life term was

mandatory, not discretionary, under the Pennsylvania Habitual Criminal Act.[1]

Exactly the opposite is true. In explicit terms the statute puts imposition of life imprisonment upon fourth offenders "in the discretion of the judge."[2] Moreover, appeal of the sentence is authorized "not only as to alleged legal errors but also as to the justice thereof," with the costs of appeal and reasonable counsel fee to be paid by the Commonwealth.[3]

In spite of his discretion and duty to exercise it, the sentencing judge, remarking that the only question was whether petitioner was the same person who had suffered the prior convictions, repeatedly spoke as if the life sentence were mandatory. The statements quoted in the margin are typical.[4]

It is immaterial that the same sentence might or probably would have been imposed in an exercise of the court's discretion. Petitioner was entitled to have sentence pro-

---

[1] Pa. Stat. Ann. tit. 18, § 5108.

[2] Section 5108 (b) provides that when the prior convictions are shown at the trial for the fourth offense, the defendant "shall, upon conviction . . . be sentenced, in the discretion of the judge trying the case, to imprisonment in a state penitentiary for the term of his natural life."

Section 5108 (d), which authorizes the procedure followed in the instant case, *viz.* a separate proceeding on an information within two years of the fourth conviction, provides that "the court may sentence him to imprisonment for life as prescribed in clause (b) of this section . . . ."

That the statute vests discretion in the sentencing judge has been clearly recognized by the Commonwealth's highest court. *Commonwealth ex rel. Foster* v. *Ashe*, 336 Pa. 238, 240.

[3] § 5108 (d).

[4] ". . . it becomes my duty under the Act of Assembly, to treat such a case, that is to say, where a person has been found guilty the fourth time of a felony within a prescribed period, to impose the sentence required by the Act."

"In other words, the law has come to this viewpoint: . . . [a fourth offender] must be removed from the possibility of ever committing the offense again."

nounced in that manner, not as an automatic mandate of statute. The denial of the very essence of the judicial process, which is the exercise of discretion where discretion is required, is in itself a denial of due process, not merely an error of state law of no concern to this Court. And we cannot speculate whether the same sentence would have been pronounced if the court's discretion had been exercised.

Moreover, the court's misconception, together with the absence of counsel, deprived the petitioner of any chance to be heard on the crucial question of sentence, the only matter left for hearing and the vital one after his plea of guilty was received. Even if it could be assumed, as the Court says, that he knew of his right to counsel from his frequent prior appearances in court,[5] still it cannot be assumed, indeed the record substantially disproves, that he knew the exact terms of the Habitual Criminal Act.[6]

[5] A dubious assumption, it would seem, in view of the fact that Pennsylvania generally confines the right to have counsel in criminal trials to capital cases. See, *e. g.*, *Commonwealth ex rel. McGlinn* v. *Smith*, 344 Pa. 41; *Commonwealth ex rel. Withers* v. *Ashe*, 350 Pa. 493. Pa. Stat. Ann. tit. 19, § 784. But cf. note 3 and text.

[6] Petitioner, when served with the information charging him as a fourth offender, was confined in the penitentiary without financial means of preparing a defense. He alleged, without contradiction, that the prison authorities refused his request for a copy of the Habitual Criminal Act. It is no answer, of course, to say that petitioner had no need of the statute or other assistance because of his previous trips through the courts. Whatever knowledge of court procedures he may have acquired, he was unfamiliar with the fourth offender act.

Even if petitioner had secured access prior to the hearing to materials needed to prepare a defense, or had been adequately informed by the court as to the statute's terms and his rights thereunder, it is highly unrealistic to assume that petitioner was capable of adequately presenting his own case at the hearing. The pleadings which he filed are telling witness of his limited intelligence and education. And at the hearing it was so obvious that petitioner was unable to comprehend the issues involved that the assistant district attorney representing the Commonwealth remarked, "He doesn't understand."

He therefore, misled it would seem by the court's language giving no hint of its discretionary power, made no plea in mitigation and had no representative to correct the court's misconception or present considerations which might have induced a sentence less severe than the one pronounced. To paraphrase the concluding sentence of the opinion in the *Townsend* case, "Counsel might not have changed the sentence, but he could have taken steps to see that the sentence was not predicated on misconception or misreading of the controlling statute, a requirement of fair play which absence of counsel withheld from this prisoner."

I find it difficult to comprehend that the court's misreading or misinformation concerning the facts of record vital to the proper exercise of the sentencing function is prejudicial and deprives the defendant of due process of law, but its misreading or misconception of the controlling statute, in a matter so vital as imposing mandatory sentence or exercising discretion concerning it, has no such effect. Perhaps the difference serves only to illustrate how capricious are the results when the right to counsel is made to depend not upon the mandate of the Constitution, but upon the vagaries of whether judges, the same or different, will regard this incident or that in the course of particular criminal proceedings as prejudicial.